

REPORT
OF THE
ATTORNEY GENERAL
OF THE
State of Florida

FROM JANUARY 1, 1927, TO DECEMBER 31, 1928

FRED H. DAVIS
Attorney General



TALLAHASSEE, FLORIDA

1929



T. J. APPLEYARD, INC., TALLAHASSEE, FLORIDA

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I.

PERSONNEL OF ATTORNEY GENERAL'S OFFICE

FRED H. DAVIS

Attorney General.

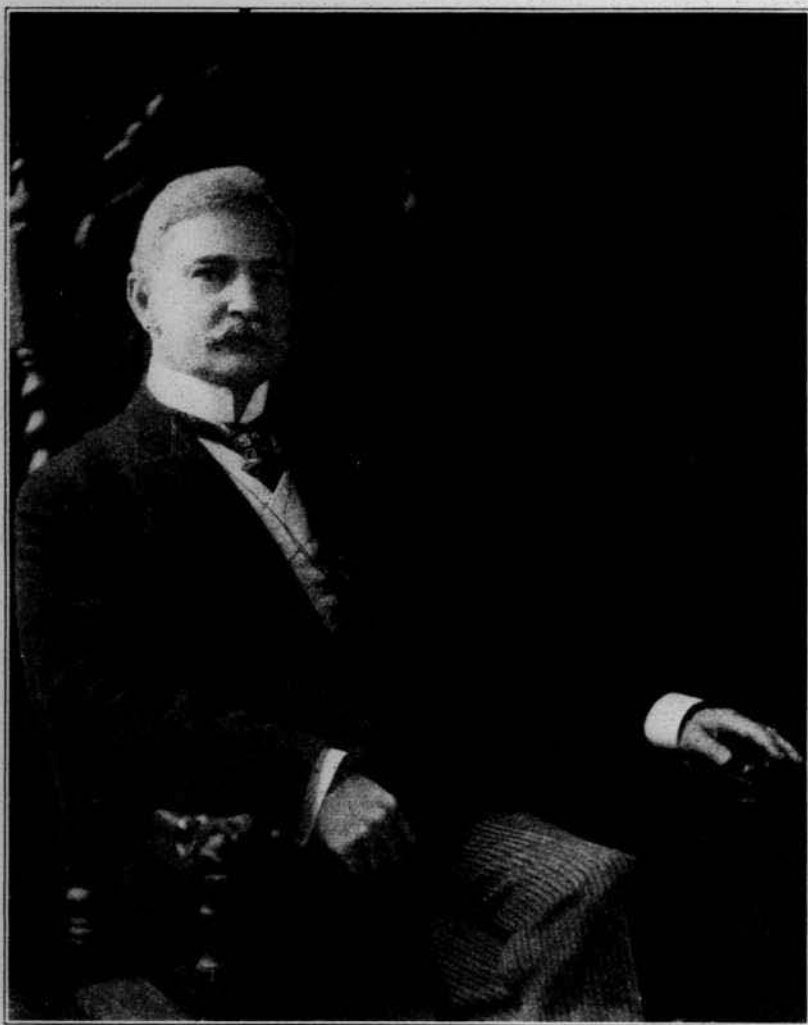
H. E. CARTER.....	Assistant Attorney General
ROY CAMPBELL.....	Assistant Attorney General
MRS. ALLIE YAWN BROWN.....	Law Clerk
MISS ANNA R. BRAY.....	Law Clerk

II.

ATTORNEY GENERALS OF FLORIDA

1845-1929

JOSEPH BRANCH.....	1845-1846
AUGUSTUS E. MAXWELL.....	1846-1848
JAMES T. ARCHER.....	1848-1848
DAVID P. HOGUE.....	1848-1853
MARIANO D. PAPY.....	1853-1860
JOHN B. GALBRAITH.....	1860-1868
JAMES D. WESTCOTT, JR.....	1868-1868
A. R. MEEK.....	1868-1870
SHERMAN CONANT.....	1870-1870
J. B. C. DREW.....	1870-1872
H. BISBEE, JR.....	1872-1872
J. P. C. EMMONS.....	1872-1873
WILLIAM A. COCKE.....	1873-1877
GEORGE P. RANEY.....	1877-1885
C. M. COOPER.....	1885-1889
WILLIAM B. LAMAR.....	1889-1903
JAMES B. WHITFIELD.....	1903-1904
W. H. ELLIS.....	1904-1909
PARK TRAMMELL.....	1909-1913
THOMAS F. WEST.....	1913-1917
VAN C. SWEARINGEN.....	1917-1921
RIVERS BUFORD.....	1921-1925
J. B. JOHNSON.....	1925-1927
FRED H. DAVIS.....	1927-1929



HON. WILLIAM BAILEY LAMAR

III

In Memoriam

LIFE AND PUBLIC CAREER OF LATE HON. W. B. LAMAR

PROMINENT IN STATE AND NATIONAL AFFAIRS

PASSED AWAY AT HIS WINTER HOME, THE COLUMNS, THOMASVILLE, GA.,
SEPTEMBER 26, 1928.

William Bailey Lamar, Democrat, of Monticello, was born in Jefferson county, Florida, June 12, 1853; his father was Thompson B. Lamar, colonel of the Fifth Florida Regiment, who was killed at Petersburg, Virginia, in July, 1864, at the head of his regiment; his mother's maiden name was Sarah Bellamy Bailey, of Jefferson county, Florida. Judge Lamar resided in Athens, Georgia, from 1866 to 1873; was educated at the Jefferson Academy, Monticello, Florida, and at the University of Georgia at Athens; removed to Florida in October, 1873; graduated in law in 1875 from the Lebanon Law School, Lebanon, Tenn., resided in Tupelo, Miss., for a short time as junior partner in law of Hon. (Private) John M. Allen; was admitted to practice law in the courts of Florida in 1876; is a member of the bar of the Supreme Court of the United States; was elected clerk of the circuit court of Jefferson county, Fla., January, 1877, and served four years; was county judge of said county, 1883 to 1886; was elected in 1886 a member of the house of representatives of the Florida legislature and chosen speaker, but declined the honor; was elected attorney general of Florida in 1888, and re-elected in the years 1892, 1896, 1900, for the period of four years each; was married June 28, 1904, at Atlanta, Ga., to Mrs. Ethel Toy Healey, daughter of Mr. and Mrs. Boyte Toy of that city; was elected to the Fifty-eighth and Fifty-ninth Congresses and re-elected to the Sixtieth Congress.—Taken from The Congressional Record.

The above gives briefly the outline of Judge Lamar's life. In the Florida legislature of 1887, he was nominated in the Democratic caucus to be speaker of the house of representatives, but he declined to accept it, giving as the reason that in electing one of his colleagues to be speaker and United States Senator, his county had been sufficiently honored.

The following laws passed by the legislature of 1887 owe their introduction and advocacy to Judge Lamar.

1. The Employer's Liability Act. This act changed the rule of the common law and made railroads liable to the public and employees for personal injuries where both were negligent but the railroad the more negligent of the two. This was the first law of its kind ever enacted in Florida.
2. The law relating to gambling and keeping gaming rooms, and the paraphernalia for gambling and making the same a felony and punishable by imprisonment in the penitentiary. This act broke up such gambling in the cities of Florida where it had flourished.

In conducting, as attorney general, a suit against the Florida Central & Peninsular Railroad for back taxes amounting to \$96,000, there was no

money available in the State treasury to pay the cost of conducting an appeal from the decision of the circuit judge against the State of Florida.

Attorney General Lamar and his mother, Sarah Bailey Lamar, joined in a promissory note to the Tallahassee Bank for nearly five hundred dollars and personally raised the amount and paid the cost of appeal to the Supreme Court of Florida. The Florida legislature at its next session thereafter provided for the payment of this note.

The case was won in the Florida Supreme Court in behalf of the State, and was also won in the Supreme Court of the United States. The sum of \$96,000 for back taxes was collected from the railroad company and paid into the State treasury. This was very much more money than Judge Lamar drew as salary for the twenty years he served as attorney general and as congressman from his State.

While a member of the national congress for six years, Judge Lamar took an active interest, in committee and debate, in behalf of national control and regulation of interstate railroad rates. His work at attorney general of Florida in enforcing State railroad commission orders against railway abuses had fitted Judge Lamar for his national work on these lines. His position on such legislation was much in advance of the great majority of his colleagues. Legislation that he urged in committee and in debate in Congress in 1905 and 1906 for controlling and regulating interstate railroads, was then rejected, but has subsequently been enacted into law.

Within a few days after taking his seat in the House of Representatives at Washington in December, 1903, Congressman Lamar moved the impeachment of United States District Judge Charles Swayne.

Twice within ten years—in 1893 and in 1903—the legislature of Florida passed resolutions condemning Judge Swayne for his conduct in Florida.

Congressman Lamar submitted these resolutions to the House of Representatives and demanded Judge Swayne's impeachment.

The House of Representatives was Republican, but a sufficient number of Republicans united with the Democrats to carry the impeachment resolutions through the House. The impeachment of Judge Swayne was entirely successful in the House of Representatives.

A word as to Judge Lamar's ancestry. His father, Colonel Thompson Bird Lamar, was born in Georgia and graduated at Emory College in that State. Soon after graduation he married Sarah Bellamy Bailey, daughter of General William Bailey of Jefferson county, Florida. Moving to Florida after his marriage, he first resided in Leon county and soon represented that county in the State Senate. Afterwards he removed to Jefferson county and became its State Senator. He was a member of the latter county in the Florida Secession Convention. He was killed at Petersburg, Virginia, in July, 1864, at the head of his regiment, in a charge upon the Federal breastworks. He was lieutenant colonel of the 5th Florida regiment at the time of his death. Colonel Lamar served for a while during the Civil War on the staff of General Joseph E. Johnston.

Killed at an early age; hundreds of Florida soldiers testified in after years to his military capacity, his cool and intrepid courage.

Sarah Bellamy Bailey, his wife and Congressman Lamar's mother, died at Tallahassee, Florida, in May, 1908, at the age of seventy-eight years.

She was from early life a devoted member of the Methodist Episcopal Church, South. As a girl she was educated at Wesleyan Female College, Macon, Ga., and in New York City at Miss Haven's celebrated school.

Her entire life was characterized by unfailing good sense, amiability, and a high sense of justice in all things.

Her father, General William Bailey, was a wealthy planter and banker of Tallahassee, Fla. He built and operated the first cotton mill in Florida. His contributions during the Civil War to the cause of the South were very large. A letter from him to the Secretary of War at that time shows the amount to have been more than \$300,000.00. The letter is printed in the published records of the Civil War authorized by the United States Government since 1865.

The paternal grandfather of Congressman Lamar was L. Q. C. Lamar. He was a Superior Court Judge in Georgia at the time that the Superior Court Judges sitting en banc constituted the Supreme Court of Georgia. He died at the early age of 37 years, but even then he was designated in the "bench and bar of Georgia" by Stephen F. Miller as "The Great Judge Lamar."

Colonel Thompson B. Lamar had two brothers, one L. Q. C. Lamar, who was a United States Senator from Mississippi, Secretary of the Interior under President Cleveland, and also Justice of the Supreme Court of the United States. His second and younger brother, Jefferson Mirabeau Lamar, was colonel of a Georgia regiment under General T. R. Cobb, and was killed at South Mountain, or as it is sometimes called, Crampton Gap.

Mirabeau B. Lamar, a brother of the first L. Q. C. Lamar, was attorney general and Secretary of War under Sam Houston, the first president of the Republic of Texas, and afterwards he became the second president of the Republic. He led the cavalry charge at the battle of San Jacinto that overthrew Santa Anna.—Taken from Makers of America, Florida Edition.

In 1915, President Woodrow Wilson conferred on Judge Lamar a distinguished honor by appointing him national resident commissioner to the Panama Pacific International Exposition at San Francisco. For ten months Judge Lamar and Mrs. Lamar resided at San Francisco and represented the government in its social and diplomatic relations with other nations arising at this great exposition. In connection with this appointment and his service there, Judge Lamar was decorated by the Emperor of Japan for meritorious service with the highest order to be given to a private citizen, the Third Order of the Rising Sun.

In private life and in public life Judge Lamar was a man of engaging and capable personality. His public service brought him in contact with the foremost people of the day and with them his knowledge, his intellect, his engaging personality, won respect, admiration and warm friendship. In private life and in his contacts with those close to him by ties of relationship and close association he was a man of deep appreciation and sympathy and unswerving devotion.—Monticello News, Monticello, Florida.

IV.

JUDICIAL DEPARTMENT OF FLORIDA

SUPREME COURT JUSTICES

TALLAHASSEE

DIVISION A.

Hon. WILLIAM H. ELLIS, Chief Justice.
Hon. LOUIE W. STRUM.
Hon. ARMSTEAD BROWN.

DIVISION B.

Hon. JAMES B. WHITFIELD, Presiding Justice.
Hon. GLENN TERRELL.
Hon. RIVERS BUFORD.

CLERK

Hon. G. T. WHITFIELD.

CIRCUIT COURT JUDGES

FIRST CIRCUIT—Hon. A. G. CAMPBELL, DeFuniak Springs.
FIRST CIRCUIT—Hon. THOMAS F. WEST, Milton.
SECOND CIRCUIT—Hon. EDWARD C. LOVE, Quincy.
SECOND CIRCUIT—Hon. J. B. JOHNSON, Tallahassee.
THIRD CIRCUIT—Hon. MALLORY F. HORNE, Jasper.
THIRD CIRCUIT—Hon. HAL. W. ADAMS, Mayo.
FOURTH CIRCUIT—Hon. GEORGE COUPER GIBBS, Jacksonville.
FOURTH CIRCUIT—Hon. DEWITT T. GRAY, Jacksonville.
DUVAL CIRCUIT—Hon. DANIEL A. SIMMONS, Jacksonville.
FIFTH CIRCUIT—Hon. W. S. BULLOCK, Ocala.
SIXTH CIRCUIT—Hon. O. L. DAYTON, Dade City.
SIXTH CIRCUIT—Hon. JOHN U. BIRD, Clearwater.
SIXTH CIRCUIT—Hon. T. FRANK HOBSON, St. Petersburg.
SEVENTH CIRCUIT—Hon. M. G. ROWE, Daytona Beach.
EIGHTH CIRCUIT—Hon. A. V. LONG, Gainesville.
NINTH CIRCUIT—Hon. D. J. JONES, Chipley.
TENTH CIRCUIT—Hon. H. C. PETTEWAY, Lakeland.
TENTH CIRCUIT—Hon. HARRY G. TAYLOR, Bartow.
ELEVENTH CIRCUIT—Hon. H. F. ATKINSON, Miami.
ELEVENTH CIRCUIT—Hon. W. L. FREELAND, Miami.
ELEVENTH CIRCUIT—Hon. A. J. ROSE, Miami.
ELEVENTH CIRCUIT—Hon. PAUL D. BARNS, Miami.
TWELFTH CIRCUIT—Hon. GEORGE W. WHITEHURST, Arcadia.
THIRTEENTH CIRCUIT—Hon. F. M. ROBLES, Tampa.
THIRTEENTH CIRCUIT—Hon. L. L. PARKS, Tampa.
FOURTEENTH CIRCUIT—Hon. AMOS LEWIS, Marianna.
FIFTEENTH CIRCUIT—Hon. C. E. CHILLINGWORTH, West Palm Beach.
SIXTEENTH CIRCUIT—Hon. J. C. B. KOONCE, Tavares.
SEVENTEENTH CIRCUIT—Hon. FRANK A. SMITH, Orlando.
EIGHTEENTH CIRCUIT—Hon. W. T. HARRISON, Palmetto.

NINETEENTH CIRCUIT—Hon. W. J. BARKER, Sebring.
TWENTIETH CIRCUIT—Hon. JEFFERSON B. BROWNE, Key West.
TWENTY-FIRST CIRCUIT—Hon. ELWYN THOMAS, Fort Pierce.
TWENTY-SECOND CIRCUIT—Hon. VINCENT C. GIBLIN, Fort Lauderdale.
TWENTY-THIRD CIRCUIT—Hon. W. W. WRIGHT, Sanford.
TWENTY-FOURTH CIRCUIT—Hon. FRED L. STRINGER, Brooksville.
TWENTY-FIFTH CIRCUIT—Hon. GEO. W. JACKSON, St. Augustine.
TWENTY-SIXTH CIRCUIT—Hon. A. Z. ADKINS, Starke.
TWENTY-SEVENTH CIRCUIT—Hon. PAUL C. ALBRITTON, Sarasota.
TWENTY-EIGHTH CIRCUIT—Hon. IRA A. HUTCHINSON, Panama City.

CLERKS OF THE CIRCUIT COURTS.

ALACHUA COUNTY, GEORGE E. EVANS, Gainesville.
BAKER COUNTY, W. C. THOMPSON, Macclenny.
BAY COUNTY, H. A. PLEDGER, Panama City.
BRADFORD COUNTY, G. W. ALDERMAN, Starke.
BREVARD COUNTY, NORRIS T. FROSCHER, Titusville.
BROWARD COUNTY, FRANK A. BRYAN, Fort Lauderdale.
CALHOUN COUNTY, J. A. PEACOCK, Blountstown.
CHARLOTTE COUNTY, W. T. OLIVER, Punta Gorda.
CITRUS COUNTY, CLAUDE CONNER, Inverness.
CLAY COUNTY, L. T. IVEY, Green Cove Springs.
COLLIER COUNTY, E. W. RUSSELL, Everglade.
COLUMBIA COUNTY, J. L. MARKHAM, Lake City.
DADE COUNTY, E. B. LEATHERMAN, Miami.
DESOTO COUNTY, R. E. MOYE, Arcadia.
DIXIE COUNTY, L. L. BARBER, Cross City.
DUVAL COUNTY, FRANK BROWN, Jacksonville.
ESCAMBIA COUNTY, LANGLEY BELL, Pensacola.
FLAGLER COUNTY, DALE B. BROWN, Bunnell.
FRANKLIN COUNTY, W. P. DODD, Apalachicola.
GADSDEN COUNTY, F. F. MORGAN, Quincy.
GILCHRIST COUNTY, W. ALTON GAY, Trenton.
GLADES COUNTY, MRS. D. S. WEEKS, Moore Haven.
GULF COUNTY, J. R. HUNTER, Wewahitchka.
HAMILTON COUNTY, W. A. LEWIS, Jasper.
HARDEE COUNTY, S. W. CONROY, Wauchula.
HENRY COUNTY, WILLIAM T. HULL, LaBelle.
HERNANDO COUNTY, H. C. MICKLER, Brooksville.
HIGHLANDS COUNTY, L. T. FARMER, Sebring.
HILLSBOROUGH COUNTY, W. A. DICKENSON, Tampa.
HOLMES COUNTY, J. W. VANLANDINGHAM, Bonifay.
INDIAN RIVER COUNTY, MILES WARREN, Vero Beach.
JACKSON COUNTY, H. A. BOWLES, Marianna.
JEFFERSON COUNTY, CLYDE H. SAULS, Monticello.
LAFAYETTE COUNTY, CULLEN W. EDWARDS, Mayo.
LAKE COUNTY, GEORGE J. DYKES, Tavares.
LEE COUNTY, J. F. GARNER, Fort Myers.
LEON COUNTY, PAUL V. LANG, Tallahassee.
LEVY COUNTY, L. W. DRUMMOND, Bronson.

LIBERTY COUNTY, W. H. WALKER, Bristol.
MADISON COUNTY, D. F. BURNETT, Jr., Madison.
MANATEE COUNTY, ROBERT H. ROESCH, Bradenton.
MARION COUNTY, T. D. LANCASTER, Jr., Ocala.
MARTIN COUNTY, J. R. POMEROY, Stuart.
MONROE COUNTY, DAVE Z. FILER, Key West.
NASSAU COUNTY, G. C. BURGESS, Fernandina.
OKALOOSA COUNTY, ALLEN T. CARR, Crestview.
OKEECHOBEE COUNTY, JOSH L. BARBER, Okeechobee.
ORANGE COUNTY, B. M. ROBINSON, Orlando.
OSCEOLA COUNTY, J. L. OVERSTREET, Kissimmee.
PALM BEACH COUNTY, FRED E. FENNO, West Palm Beach.
PASCO COUNTY, A. J. BURNSIDE, Dade City.
PINELLAS COUNTY, KARL B. O'QUINN, Clearwater.
POLK COUNTY, J. D. RAULERSON, Bartow.
PUTNAM COUNTY, W. A. WILLIAMS, Jr., Palatka.
SANTA ROSA COUNTY, T. W. JONES, Milton.
SARASOTA COUNTY, J. R. PEACOCK, Sarasota.
SEMINOLE COUNTY, V. E. DOUGLASS, Sanford.
ST. JOHN'S COUNTY, OBE P. GOODE, St. Augustine.
ST. LUCIE COUNTY, P. C. ELDRED, Fort Pierce.
SUMTER COUNTY, ROY CARUTHERS, Bushnell.
SUWANEE COUNTY, J. W. BRYSON, Live Oak.
TAYLOR COUNTY, JAMES R. JACKSON, Perry.
UNION COUNTY, S. T. DOWLING, Lake Butler.
VOLUSIA COUNTY, SAMUEL D. JORDAN, DeLand.
WAKULLA COUNTY, L. L. PARARO, Crawfordville.
WALTON COUNTY, M. T. FOUNTAIN, DeFuniak Springs.
WASHINGTON COUNTY, J. A. DOUGLAS, Chipley.

JUDGE OF THE COURT OF RECORD

ESCAMBIA COUNTY—Hon. C. MORENO JONES.

JUDGES OF THE CRIMINAL COURTS OF RECORD

DADE COUNTY—Hon. TOM NORFLEET, Miami.
DUVAL COUNTY—Hon. JAMES M. PEELER, Jacksonville.
HILLSBOROUGH COUNTY—Hon. W. R. PETTEWAY, Tampa.
MONROE COUNTY—Hon. J. VINING HARRIS, Key West.
ORANGE COUNTY—Hon. WILBER L. TILDEN, Orlando.
PALM BEACH COUNTY—Hon. A. G. HARTRIDGE, West Palm Beach.
POLK COUNTY—Hon. H. K. OLLIPHANT, Bartow.

JUDGES OF THE COURT OF CRIMES

DADE COUNTY—Hon. W. F. BROWN, Miami.
HILLSBOROUGH COUNTY—Hon. W. MARION HENDRY, Tampa.

STATE ATTORNEYS

FIRST CIRCUIT—L. L. FABISINSKI, Pensacola.
SECOND CIRCUIT—GEORGE W. WALKER, Tallahassee.
THIRD CIRCUIT—J. R. KELLY, Madison.

- FOURTH CIRCUIT—CHARLES M. DURRANCE, Jacksonville.
 FIFTH CIRCUIT—C. A. SAVAGE, Ocala.
 SIXTH CIRCUIT—E. P. WILSON, Dade City.
 SEVENTH CIRCUIT—J. A. SCARLETT, DeLand.
 EIGHTH CIRCUIT—J. C. ADKINS, Gainesville.
 NINTH CIRCUIT—L. D. McRAE, Chipley.
 TENTH CIRCUIT—C. A. BOSWELL, Bartow.
 ELEVENTH CIRCUIT—VERNON HAWTHORNE, Miami.
 TWELFTH CIRCUIT—GUY M. STRAYHORN, Fort Myers.
 THIRTEENTH CIRCUIT—CHARLES B. PARKHILL, Tampa.
 FOURTEENTH CIRCUIT—J. FRANK ADAMS, Blountstown.
 FIFTEENTH CIRCUIT—L. R. BAKER, West Palm Beach.
 SIXTEENTH CIRCUIT—J. W. HUNTER, Tavares.
 SEVENTEENTH CIRCUIT—C. A. BOYER, Orlando.
 EIGHTEENTH CIRCUIT—DEWEY A. DYE, Bradenton.
 NINETEENTH CIRCUIT—M. R. McDONALD, Sebring. (L. Grady Burton, Wau-
 chula, nominated.)
 TWENTIETH CIRCUIT—ARTHUR GOMEZ, Key West.
 TWENTY-FIRST CIRCUIT—ANGUS SUMNER, Fort Pierce.
 TWENTY-SECOND CIRCUIT—LOUIS F. MAIRE, Fort Lauderdale.
 TWENTY-THIRD CIRCUIT—MILLARD S. SMITH, Titusville.
 TWENTY-FOURTH CIRCUIT—E. C. MAY, Inverness. (M. C. Scofield, Inverness,
 nominated.)
 TWENTY-FIFTH CIRCUIT—JULIAN C. CALHOUN, Palatka.
 TWENTY-SIXTH CIRCUIT—H. V. KNIGHT, Starke.
 TWENTY-SEVENTH CIRCUIT—C. RAY SMITH, Sarasota.
 TWENTY-EIGHTH CIRCUIT—C. R. MATHIS, Panama City.

COUNTY ATTORNEYS

- FRED D. BRYANT, Alachua County, Gainesville.
 WALTER A. DOPSON, Baker County, Macclenny.
 J. ED. STOKES, Bay County, Panama City.
 A. S. CREWS, Bradford County, Starke.
 SMITH, CROFTON & WILSON, Brevard County, Titusville.
 _____, Broward County, Fort Lauderdale.
 H. V. McCLELLAN, Calhoun County, Blountstown.
 BUTLER & ELLIS, Charlotte County, Punta Gorda.
 _____, Citrus County, Inverness.
 G. W. GEIGER, Clay County, Green Cove Springs.
 ERLE M. DONALSON, Collier County, Everglade.
 R. W. FARNELL, Columbia County, Lake City.
 A. B. & C. C. SMALL, Dade County, Miami.
 JONES & SMILEY, DeSoto County, Arcadia.
 J. M. McKINNEY, Dixie County, Cross City.
 F. B. CARTER, Escambia County, Pensacola.
 A. D. LYNN, Flagler County, Bunnell.
 R. DON McLEON, JR., Franklin County, Apalachicola.
 E. PAUL GREGORY, Gadsden County, Quincy.
 L. P. WILLIAMS, Gilchrist County, Trenton.
 B. A. BALES, Glades County, Moore Haven.

O. K. WEED, Gulf County, Wewahitchka.
 E. C. RUTLEDGE, Hamilton County, Jasper.
 S. D. WILLIAMS, Hardee County, Wauchula.
 HERBERT A. RIDER, Hendry County, LaBelle.
 A. J. LAW, Hernando County, Brooksville.
 J. M. LEE, Highlands County, Avon Park.
 MORRIS M. GIVENS, Hillsborough County, Tampa.
 A. W. WEEKS, Holmes County, Bonifay.
 J. T. VOCELLE, Indian River County, Vero Beach.
 JAMES H. FINCY, Jackson County, Marianna.
 J. M. JOHNSON, JR., Jefferson County, Monticello.
 LESTER SUMMERSILL, Lafayette County, Mayo.
 J. W. HUNTER, Lake County, Tavares.
 CYRUS Q. STEWART, Lee County, Fort Myers.
 BLOUNT MYERS, Leon County, Tallahassee.
 JOHN R. WILLS, Levy County, Bronson.
 _____, Liberty County, Bristol.
 K. H. ROWE, Madison County, Madison.
 DEWEY A. DYE, Manatee County, Bradenton.
 MARTIN & HOCKER, Marion County, Ocala.
 SMITH & KANNER, Martin County, Stuart.
 WM. H. MALONE, Monroe County, Key West.
 J. B. STEWART, Nassau County, Fernandina.
 W. J. RICE, Okaloosa County, Crestview.
 T. W. CONELY, JR., Okeechobee County, Okeechobee.
 O. RAYMOND ELLARS, Orange County, Orlando.
 J. F. ROBINSON, Osceola County, West Palm Beach.
 W. E. ROEBUCK, Palm Beach County, West Palm Beach.
 ARTHUR AUVIL, Pasco County, Dade City.
 JOHN C. BLOCKER, JR., Pinellas County, St. Petersburg.
 M. D. WILSON, Polk County, Bartow.
 C. S. GREEN, Putnam County, Palatka.
 W. A. MACWILLIAMS, St. Johns County, St. Augustine.
 H. J. DAME, St. Lucie County, Fort Pierce.
 M. F. CALDWELL, JR., Santa Rosa County, Milton.
 JOHN H. CARTER, JR., Sarasota County, Sarasota.
 H. S. WHITE, Seminole County, Sanford.
 S. W. GETZEN, Sumter County, Bunnell.
 J. L. BLACKWELL, Suwannee County, Live Oak.
 T. J. SWANSON, Taylor County, Perry.
 _____, Union County, Lake Butler.
 HULL, LANDIS & WHITEHAIR, Volusia County, DeLand.
 A. L. PORTER, Wakulla County, Crawford.
 D. STUART GILLIS, Walton County, DeFuniak Springs.
 _____, Washington County, Vernon.

V.

LETTER OF TRANSMITTAL

STATE OF FLORIDA
ATTORNEY GENERAL'S OFFICE

Tallahassee, Florida, Jan. 1, 1929.

*To His Excellency, Honorable John W. Martin,
Governor of Florida.*

SIR:—Having served as Attorney General of the State of Florida since June 4th, 1927, as successor to the Honorable John B. Johnson, who resigned to accept appointment as additional judge of the Second Judicial Circuit of Florida, I herewith submit the report of the Attorney General covering the period of time prior to the date of this report and subsequent to the last preceding report which was made by my predecessor in office to the 1927 session of the Legislature, which covered the period from January 1, 1925, to and including December 31, 1927.

Respectfully submitted,

FRED H. DAVIS,
Attorney General.

VI.**REPORT OF THE ATTORNEY GENERAL****NATURE OF REPORT**

The Constitution and statutes require that each officer of the Executive Department make to the Governor full report of his official acts, of the receipts and expenditures of his office, and of the requirements of the same, at regular periods, or whenever the Governor shall require it.

By long established practice, the reports regularly made are rendered just prior to the convening of each regular session of the Legislature and cover the period of the two calendar years which precede the year in which the regular session of the Legislature convenes.

This report therefore covers the period beginning January 1, 1927, and ending December 31, 1928.

SCOPE OF ATTORNEY GENERAL'S DUTIES

The office of Attorney General has existed from an early period, both in England and in this country, and is vested by the common law with a great variety of duties in the administration of the government.

These duties are so numerous and varied that it has not been the policy of the legislatures of the several states of the Union to attempt specifically to enumerate them; and where the question has come up for consideration it is generally held that the office is clothed, in addition to the duties expressly defined by statute, with all the power pertaining thereto under the common law.

As the chief law officer of the State, the Attorney General may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may from time to time require. In giving his advice and opinions on questions of law to the Governor and various heads of departments of the State, his duties are regarded by law as quasi judicial. His opinions officially define the law in a multitude of cases where in practice his decision is final and conclusive, not only as respects the actions of the public officers themselves in administrative matters, who are thus relieved from the responsibility which would otherwise attach to their acts, but also in questions of private rights, inasmuch as parties having concerns with the State government possess in many instances no means of bringing a controverted matter before the courts of law where they can obtain a purely judicial legal decision of the controversy as distinguished from an administrative one only by reference to the Attorney General.

CONSTITUTION AND STATUTES RELATING TO DUTIES

For information there is quoted herewith the following portions of the Constitution and statutes of the State of Florida directly pertaining to the duties and powers of the Attorney General in this State:

"The Attorney General shall be the legal adviser of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court." (Section 22, Article IV, Constitution.)

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of the State; he shall appear in and attend to such suits or prosecutions in any other of the courts of the State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof." (Section 125, Comp. Laws, 1927.)

"In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this State may appoint another person to perform such duty in his stead." (Section 126, Comp. Laws, 1927.)

"The Attorney General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire general acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, and also an index to the local acts and an index to each of the journals of the two branches of the Legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney General shall be published under his direction." (Section 127, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General at the convening of each session of the Legislature of this State, or as soon thereafter as possible, to recommend a person experienced in indexing, to supervise and assist the respective clerks of each branch of the Legislature having such work in hand, in making the index for both journals. His compensation shall be fixed by the Legislature as other attaches and he shall have as many days as the Legislature may designate by resolution after the close of each session for completing and presenting his work for approval by the Attorney General, who is authorized to approve such index if found correct, before the payment shall be made for the extra days allowed after the close of the Legislature." (Section 128, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the court thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest

may demand, which report shall be laid before the Legislature by the Governor with his first message." (Section 129, Comp. Laws, 1927.)

"It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts." (Section 130, Comp. Laws, 1927.)

"The Attorney General shall exercise a general superintendence and direction over the several State Attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State Attorneys, shall give them his opinion upon any question of law." (Section 131, Comp. Laws, 1927.)

"The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State Attorneys, and it shall be their duty to comply with his instructions in this respect." (Section 132, Comp. Laws, 1927.)

"The Clerk of the Supreme Court is hereby directed to deliver to the Attorney General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said Clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said Court." (Section 133, Comp. Laws, 1927.)

"The Attorney General is required to prepare and cause to be printed a sufficient number of copies of fee bills of the various officers of the several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a conspicuous place in their office such fee bills, for the information of persons having business with them." (Section 4677, Comp. Laws, 1927.)

In addition to the duties embraced in the foregoing sections of the statutes, other provisions of law make it the duty of the Attorney General to approve the bond of the Comptroller (Sec. 140), of the Shell Fish Commissioner (Sec. 1844), prosecute combinations against Florida meats (Sec. 7076), and investigate and rectify commercial discriminations (Secs. 3940-3943), enjoin violations of the laws regulating commercial feed stuffs (Sec. 3259), conduct condemnation proceedings on behalf of Board of Commissioners of State Institutions (Sec. 5105) and on behalf of the Adjutant General's office for military purposes (Sec. 2054), approve articles of incorporation for co-operative marketing associations (Sec. 6473), examine and pass on statements filed by investment companies (Sec. 5997), bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (Sec. 7946), enforce the anti-trust laws of the State (Sec. 7946), pass upon revocation of licenses of investment companies (Sec. 6001), bring proceedings to annul franchise of corporations not for profit under certain conditions (Sec. 6505), approve title to real estate in which the State is interested (Sec. 2399), pass upon permits of associations doing business under a declaration of trust (Sec. 7093), represent the State in disbarment proceedings in the Supreme Court

(Sec. 4176), pass upon and approve regulations of district drainage boards (Sec. 1494), certify Everglades Drainage District bonds (Sec. 1555), bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (Sec. 6524), prepare and publish copies of opinions of the Supreme Court (Secs. 4713, 1983) and act as reporter for the Supreme Court (Sec. 4714), participate in hearings on prosecutions instituted against violators of pure food and drug laws (Sec. 3201), prepare forms for hunting licenses (Sec. 1898), furnish indexes to laws and journals of the Legislature (Sec. 1983), conduct proceedings against insolvent or defaulting insurance companies (Sec. 6202, 6228), conduct all quo warranto proceedings (Secs. 5446, 8162), act as attorney for the Railroad Commission (Secs. 6720, 6732, 6734, 6747, 6751) although this work is negligible because of a provision for the Railroad Commission to employ special counsel under Section 6732; attend all legal business arising in connection with the laws governing the salt water fishing industry (Sec. 1846), prepare bond of contractor for uniform school books (Secs. 860-861), pass upon legality of and give approval to all investments of school district sinking funds in purchases of bonds (Sec. 736), devise and furnish a form of seal for all the courts of the State (Sec. 4881), bring proceedings for annulment of franchises of social clubs under certain conditions (Sec. 6505), control and supervise acts of special assistants to the Attorney General who are not part of the Attorney General's office force, being directly responsible to and appointed by the Governor for special work (Secs. 134-135); give special attention to legal proceedings in connection with the sponge fishing industry (Sec. 1886), conduct suits on bonds of State health officer (Sec. 3170), act as legal advisor and attorney for State Plant Board (Sec. 3833), act as legal advisor for State Road Department (Sec. 1639) which has, however, a special attorney who acts for it in ordinary cases; sue to recover fines for doing business without a license (Sec. 7450), bring suits to restrain the advertisement of liquors (Sec. 7600); conduct prosecutions against defaulting and delinquent surety companies (Sec. 6296), assist in fixing values of securities deposited with State Treasurer by trust companies under the Trust Act (Sec. 6131), enforcement of vital statistics law (Sec. 3293), as well as attend to a multitude of administrative duties as member of various boards and answer numerous inquiries from State, county and municipal officers as matters of information.

As has been pointed out, to the foregoing should be added the duties imposed on the Attorney General directly by Sections 125 to 132 of the Compiled Laws of 1927, as well as the undefined duties imposed by the common law.

MEMBERSHIP ON VARIOUS BOARDS

By virtue of constitutional and statutory provisions the Attorney General is a member of the following State boards:

One of the five members of the State Board of Pardons. (Sec. 12, Art. IV, Const.)

One of five members of the State Board of Education. (Sec. 12, Art. III, Const.)

One of the seven members of the Board of Commissioners of State Institutions. (Sec. 17, Art. IV, Const.)

One of five members of Board of Drainage Commissioners. (Sec. 1524, Comp. Stats.)

One of five members Board of Commissioners of Everglades Drainage District. (Sec. 1531.)

One of three members State Board of Canvassers of Election Returns. (Sec. 348.)

One of seven members of State Budget Commission which prepares State budget for general appropriation bill for each session of the Legislature. (Sec. 1366.)

One of three members of commission to examine into validity of State warrants dated prior to July 1, 1871. (Sec. 1361.)

One of two members of Investment ("Blue Sky") Board which passes on all licenses for foreign and domestic companies to sell securities in this State. (Sec. 7093.)

One of five members of the State Sinking Fund Commission to control sinking fund to retire State debt. (Sec. 1379.)

One of three members of State Tax Equalizing Board. (Sec. 1046.)

One of three members of Board for Assessment of Railroads, Telegraph and Telephone Companies. (Sec. 960.)

One of seven members of State School Book Commission to select uniform text books for schools of the State. (Sec. 852.)

One of five members Trustees Internal Improvement Fund which holds title to and disposes of all State lands other than school lands held by State. (Sec. 1385.)

One of three members of Board for Fixing Values of Investment Securities of Trust Companies. (Sec. 6131.)

One of five members State Vocational Educational Board. (Sec. 842.)

Of the above boards, the Commissioners of Everglades Drainage District, Trustees of the Internal Improvement Fund, State Board of Education, and Commissioners of State Institutions hold regular meetings once each week on Tuesdays.

The State Board of Pardons holds two regular meetings each year, one in March and the other in September, while the so-called "Blue Sky" Board will average about two meetings per month. The Railroad Assessment Board meets annually while the other boards meet at irregular times annually or biennially as called by their respective chairmen.

OFFICIAL OPINIONS

The Attorney General has been called upon to render to the Governor and members of the Administrative Department of the State government, as well as to the heads of various boards and commissions acting under State authority, a large number of official opinions touching their respective powers and duties, copies of which opinions are preserved in the Attorney General's office, and a number of which will be found reproduced in this report for the information of the public at large.

By arrangement with the Florida State Bar Association, which publishes an official monthly magazine known as the "Florida Law Journal," copies of all important opinions of the Attorney General's office are sent to the editor for reprinting in the Law Journal if deemed of interest to the

bar, and likewise copies of such opinions have been furnished to the publishers of the "Docket," which is the official publication of the clerks and other county officers' associations in the State.

In addition to furnishing written opinions of an official nature, the Attorney General has been frequently called into consultation by various other officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessarily made by the Attorney General in order that he may properly and intelligently advise in such cases. Necessarily no record of this work can be made, but much of the time of the Attorney General personally and that of his two assistants is devoted to this class of work.

UNOFFICIAL OPINIONS

Beginning with the administration of Hon. W. H. Ellis as Attorney General, there began a gradual increase in what may be called the "unofficial" correspondence of the Attorney General's office.

County officials and even many private individuals make frequent inquiries of the Attorney General concerning various matters of law, some of which from their nature cannot be answered with an expression of opinion, but which, nevertheless, have to be acknowledged by reply sent to the party making the inquiry giving the reason why the answer cannot be made, where that is the case. In other cases, where deemed proper for such course, the Attorney General has written opinions on the propositions submitted, discussing reasons and citing legal precedents in court reports for the conclusions given.

In no instance has the Attorney General felt, when he answered a request for an opinion by giving one on the subject requested in a proper case, that he was warranted in giving what is commonly called a "curbstone" opinion on the subject inquired about, but in each instance has resorted to an examination of the legal precedents available in his library as a guide in formulating any opinion expressed, even though it was unofficial.

The following extract from the report of the Attorney General dated March 28th, 1907, during the incumbency of former Attorney General Ellis, now a Justice of the Supreme Court, is pertinent to conditions as they have existed in this office during the past two years:

' The official work of this department is constantly increasing. During the past two years the work which has devolved upon the Attorney General has far exceeded the work of any two years within the history of the office, so far as that history is shown by the records of this office. I think it would be within the exact truth to say that the work which now devolves upon the Attorney General is many times greater than it has ever been.

The unofficial correspondence which constitutes part of the semi-official business heretofore mentioned has demanded a large portion of my time. The Attorney General is appealed to for his opinion upon a great number of subjects relating to the duties of county officials and officers of cities and towns. In each letter received one or more questions of law were submitted, and each ques-

tion required time for consideration. I have given these letters my personal attention and have endeavored to furnish accurate information to the authors, although in many cases it was exceedingly difficult to do so, by reason of the meager and unsatisfactory statement of the facts upon which advice was sought. This feature of the work of the Attorney General has been growing for several years, until it now amounts to a serious interference with the performance of those duties required by the Constitution and laws of the State.

While the Attorney General's office has always taken the position in regard to unofficial opinions of the character referred to, that the Attorney General was not charged with the duty of advising county, district and municipal officers, yet as a matter of courtesy to those making inquiry, and with a view of assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, the Attorney General is constantly required to and does write a large number of what may be termed these unofficial opinions, a number of those rendered during the past two years being incorporated in this report.

One of the requirements of Section 125, Compiled Laws of 1927, is that the Attorney General "shall have and perform all powers and duties incident or usual to such office" and it may now be said that, in spite of the position in regard to these unofficial opinions which have been insisted upon by the various Attorneys General who have had to deal with the situation, to the effect that it was no part of the duties of the Attorney General to give legal advice to county, district and municipal officers, it nevertheless by custom and practice has become an established part of the duties of the Attorney General *in fact*, whether in law or not, and the performance of this function may now almost be said to be covered by the terms of the statute above referred to, namely, that these requests for unofficial opinions in proper cases shall be investigated and answered as a power and duty incident and usual to the Attorney General's office as it is now viewed by the various State, county, municipal and district officials, as well as by the majority of the citizens, of this State.

CLERICAL ASSISTANCE

The Attorney General has been more than fortunate during the period covered by this report, in having the services in his office of two competent law clerks who are trained stenographers as well.

These two law clerks have borne the burden of preparing in type-written form the many briefs and letters, opinions and otherwise, which are prepared in this office by the Attorney General and his two Assistant Attorneys General, but in order to do so it has been necessary that both they and the Attorney General work many hours in this office after all other departments in the capitol were closed, in order that the work might not be unduly delayed. In many instances the work in question has been done at night as well as after hours during the day.

It will be obvious to any one who investigates the matter, that additional clerical help must be supplied or the Attorney General's office must abrogate a part of the service which it is now rendering in an official way.

ASSISTANT ATTORNEYS GENERAL

This report would not be complete without calling attention to the helpful co-operating and valuable service rendered in the Attorney General's office by the two Assistant Attorneys General, Hon. H. E. Carter and Hon. Roy Campbell, in assisting the Attorney General in the discharge of his duties and fulfillment of the requirements of the rules of court which make necessary the examination and briefing of every case in the Supreme Court where the State is a party in interest.

Most of the criminal cases passing through the Attorney General's office are handled by the Assistant Attorneys General, who must spend many hours examining records, reading briefs filed by opposing counsel, and in preparing rebuttal briefs to be filed for the State in support of affirmance of the judgment appealed from.

The time of the Attorney General himself is occupied with the more important civil cases, performance of administrative duties incident to the office and in the investigation and answering of requests for official and unofficial opinions on the various propositions of law which are constantly being submitted to him for consideration. The Attorney General in person is also frequently called upon to go to various parts of the State to transact business of an official nature in the public interest, as well as appear before the courts in many oral arguments on important matters of litigation of vital interest to the State.

REPORTER FOR SUPREME COURT

The task of acting as reporter for the Supreme Court is imposed on the Attorney General by the Constitution. Its satisfactory performance involves more detailed work than one would ordinarily imagine.

Opinions furnished by the Supreme Court to its official reporter frequently have citations of cases omitted which have to be supplied by research and interlineation of the book and page where same may be found. This occurs in each and every instance where the Supreme Court cites a case decided by it at its current term and is at the time unable to give the book and page of same because at the time the opinion is handed down the Florida Report in question cited has not been printed so as to make the information available to the Court. All such citations have to be later looked up and supplied in the text by the Attorney General, who is likewise required to make an index digest of the cases in each volume of the Supreme Court Reports before it can be printed.

During the two years covered by this report the Attorney General has acted as reporter for the following volumes of the Florida Supreme Court reports, namely: Vols. 93, 94, 95 and 96.

A great degree of care must be exercised in this work, as the opinions filed by the Court are expected to be accurately reproduced in the reports. The Court also expects the Attorney General to insert in the report a cross reference index of where each case reported may be found in the Southern Reporter, and this requirement has invariably been met by the Attorney General's office which has supplied these references after much labor and research, as each case must be separately looked up and the book and page of the Southern Reporter wherein same may be found carefully noted and checked.

PUBLISHING ACTS AND RESOLUTIONS OF LEGISLATURE

The Acts and Resolutions of the Legislature of this State for the regular session of 1927 were published, with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the journals of each branch of the Legislature were also prepared under the direction of this office, the index to the journals having been prepared as provided by Section 128 (104) Compiled Laws of 1927.

CIVIL CASES

During the past two years many new and unusual civil cases, mostly involving State tax matters, have been started against the State. In each instance the Attorney General has given these personal attention, as well as given attention to many other civil cases filed in which the State was directly or indirectly interested.

A detailed list of these cases with the status of each will be found in this report under the heading "Schedule of Civil Cases."

CRIMINAL CASES

Every criminal and habeas corpus case in the Supreme Court is handled on the part of the State by the Attorney General. Briefs on behalf of the State in all such cases have been prepared and filed in the Supreme Court and oral arguments made in all cases where same were requested by the opposite party and held before the Court.

A list of such cases with their disposition is given in this report under an appropriate heading.

EXAMINATION AND APPROVAL OF BOND ISSUES

Owing to the fact that the State Board of Education frequently invests the school fund in various issues of State, county and municipal bonds, the Attorney General is constantly required to examine proceedings relating to bond issues, some of the bonds of which are proposed to be purchased by the State School Fund, and render an official written opinion as to the validity of the bonds proposed to be purchased.

A number of such cases are handled each year as a part of the regular routine of this office.

CONCLUSION

In submitting this report the Attorney General has felt it appropriate to include herein the biography of one of the distinguished statesmen of Florida and a former Attorney General who served this State for a number of years and who died since the last Attorney General's report was submitted—Hon. William B. Lamar.

It is hoped that the official business which has been transacted in this office during the period covered by the report submitted has been satisfactory to the people and that the record of same herein set forth and preserved will be of value to those in whose hands this report shall be placed in the course of its distribution.

Respectfully submitted,

FRED H. DAVIS,
Attorney General.

VII.

APPROPRIATIONS AND EXPENDITURES

APPROPRIATIONS

July 1, 1927, to June 30, 1929—

Assistant Attorney General	\$10,000.00
Assistant Attorney General	8,400.00
Law Clerk	4,200.00
Law Clerk	4,200.00
Indexing and Side-noting Laws as required by Sections 103 and 104, R. G. S., 1920	2,500.00
Incidental Expenses	3,000.00
Purchase of Books	1,000.00
Office Equipment	700.00
Balance on Hand January 1, 1927	7,095.85

Total	\$41,095.85
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EXPENDITURES

January 1, 1927, to December 31, 1928—

Assistant Attorney General	\$ 9,500.00
Assistant Attorney General	8,300.00
Law Clerk	4,050.00
Law Clerk	4,050.00
Indexing and Side-noting Laws.....	1,983.33
Incidental Expenses	2,656.38
Purchase of Books	1,130.75
Office Equipment	774.89
Amount to Revert in Indexing and Side-noting Fund.....	516.67

Total	\$32,962.02
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Balance to Cover all Expenses to June 30, 1929	\$ 8,133.83
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VIII.

SCHEDULE OF CIVIL CASES

CHANCERY

In the Supreme Court of Florida.

Harry Adler, Appellant, vs. Henry Clay Mitchell, as Sheriff of Santa Rosa County, Appellee.

This suit was brought in the Circuit Court of Santa Rosa County, praying that defendant be restrained and enjoined from seizing and holding an Automatic Mint Vendor, which said machine was seized and held by virtue of authority vested in him as sheriff, under Section 5507, Revised General Statutes of Florida, where said application for temporary injunction was denied, from which ruling the case was appealed to the Supreme Court where the decree of the Circuit Court was affirmed on May 2, 1927.

In the Circuit Court, Duval County.

Henry G. Aird, Plaintiff, vs. John W. Wiggins, et ux, and Fred H. Davis, as Attorney General of the State of Florida, et al., Defendants.

This was a suit brought to foreclose a mortgage upon certain property in Duval county, such property being subject to a tax lien for State and County Taxes. Answer of the Attorney General was filed in April, 1927, whereupon replication to answer was filed. Order was made on September 9, 1927, appointing a special master. Notice fixing time for taking testimony was filed, and on November 22, 1927, said special master filed his report wherein it was recommended that this Honorable Court make and enter a decree of foreclosure and sale herein, etc., whereupon a decree of foreclosure was entered, and the special master did sell on February 7, 1928, the said mortgaged property and order confirming said sale was made on the day of A. D. 1928.

In the Circuit Court, Escambia County.

American National Bank of Pensacola, Complainant, vs. J. S. Roberts, as Tax Collector, Defendant.

This suit was brought for the purpose of enjoining the collection of taxes assessed against the capital stock, or shares of the complainant bank for the year 1925. Demurrer to bill was filed and was overruled and temporary injunction granted, from which ruling defendants appealed to the Supreme Court, where order of lower court was affirmed on August 1, 1927. Thereupon answer was duly filed, examiner appointed and testimony taken and the case again submitted to the Circuit Court on the pleadings and report of examiner. After report of examiner was filed a final decree was rendered making perpetual the temporary injunction theretofore granted. Whereupon from such ruling the defendant again appealed to the Supreme Court where case is now pending.

In the Circuit Court, Polk County.

American National Bank of Winter Haven, a Corporation, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.
Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the

year 1926. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller to intervene in said cause. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Orange County.

Ernest Amos, Comptroller, Complainant, vs. Church Street Bank of Orlando, Florida, Defendant.

One M. W. Hazen caused to be filed in this suit a petition praying for the vacation of the order signed on March 19, 1928, confirming the appointment by the State Comptroller, of George W. Burden, as receiver of the Church Street Bank of Orlando. A motion to dismiss said petition was filed on behalf of the Comptroller, which motion was granted. The Court also granted motion of petitioner to strike the papers filed by the receiver.

In the Circuit Court, Leon County.

Atlantic Coast Line Railroad Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This is an action brought by complainant praying that the Comptroller be restrained and enjoined from issuing, serving or levying warrants of said Comptroller, or any other writ, order or process, in attempting to collect from said railroad company certain taxes for the year 1924, etc. A demurrer was filed to complainant's bill on October 5, 1925, and on April 16, 1926, the Court entered an order sustaining said demurrer, denying complainant's application for a temporary restraining order, from which order an appeal was taken to the Supreme Court, the decree of the lower court was reversed on August 1, 1927.

In the Circuit Court, Leon County.

Atlantic Coast Line Railroad Company, Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the case is now pending.

In the Circuit Court, Polk County.

Babson Park State Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Appearance for defendants will be on file January 7, 1929.

In the Circuit Court, Jackson County.

Bank of Greenwood, a Corporation, Complainant, vs. Hinton Folsom, Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of

taxes assessed against the shares of stock of complainant bank for 1926 for State and County purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill were filed on December 5, 1928, granting a perpetual injunction herein, from which decree an appeal was taken to the Supreme Court where the case is pending.

In the Circuit Court, Jackson County.

Bank of Malone, a Corporation, Complainant, vs. Hinton Folsom, Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the shares of stock of complainant bank for 1926 for State and County purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill were filed on December 5, 1927. Final decree was entered on July 19, 1928, granting a perpetual injunction herein.

In the Circuit Court, Polk County.

Bank of Mulberry, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Duval County.

W. D. Brinson, Complainant, vs. R. Fleming Bowden, Tax Collector, et al., Defendants.

This was a suit brought seeking to set aside the tax assessment against certain land known as Baldwin Manor, Duval county, and enjoining the tax assessor from collecting the taxes for 1926, and enjoining the tax assessor from assessing taxes for the year 1927. Consent decree entered and matter closed.

In the Circuit Court, Leon County.

Brooksville & Inverness Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Leon County.

Capital City Bank of Tallahassee, Complainant, vs. R. A. Davis, et al., Defendants.

This is an action brought wherein complainant prays that it be decreed to have a first lien in a certain amount found to be due the said contractors; that National Surety Company be enjoined and restrained for asserting any

right or claim to said funds as against your orator; and that the said Board of Control be enjoined and restrained from making any payments to said surety company of any funds found to be due and payable to the said contractors, etc. Appearance on behalf of the State Board of Control was filed, also a demurrer. An amendment to the bill was filed, and the Court allowed complainant to dismiss as to the Board of Control, and also permitted complainant to make the State Comptroller and Treasurer parties defendant. No summons in chancery has been served on these two last named defendants.

In the Circuit Court, Leon County.

Charlotte Harbor & Northern Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Polk County.

Commercial Bank & Trust Company, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Duval County.

Robert H. Crawford, Complainant, vs. A. C. Lyles, et ux, et al., Defendants.

This is a suit brought for the purpose of quieting title to that certain piece of property known as the east thirty-one and one-half feet of lot three, block twenty-six, Division "E" LaVilla, Duval County, Florida. Answer filed for State.

In the Circuit Court, Leon County.

Dade Muck Land Company, Complainant, vs. John W. Martin, as Governor, et al., Defendants.

This suit was brought for the purpose of testing the validity of Chapter 12016, Acts of 1927. Demurrer to bill of complaint was filed which was overruled and thereupon case appealed to the Supreme Court where the judgment of the lower court was reversed.

In the Supreme Court of Florida.

Dade County, Florida, Appellant, vs. The State of Florida, Appellee.

This suit was brought in the Circuit Court in and for Dade county, wherein the validation and confirmation of certain Ocean Front Protection and Improvement Bonds, in the sum of Two Million Dollars was sought and prayed. The Court after hearing argument of counsel entered an order perpetually denying the validation of such county bonds, from which order the petitioner below, appellant here, entered its appeal to the Supreme Court where the opinion of the lower court denying the validation of the bonds on the ground that they were unconstitutional was affirmed.

In the District Court of the United States, Southern District of Florida.
Davis Island, Inc., Complainant, vs. United States of America, the State of Florida, et al., Defendants.

A petition for leave to file bill to foreclose mortgage was filed herein, which petition was granted and bill filed on September 20, 1928. This suit is brought in an effort to foreclose a certain mortgage on property located in the City of Tampa, the owner of which having had an income tax lien filed against him, and the State of Florida holding a judgment against one of the defendants who is the owner of the property in question. Answer on behalf of the State was filed on October 1, 1928.

In the Circuit Court, Leon County.

East & West Coast Railway Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Leon County.

Fidelity & Deposit Company of Maryland, Complainant, vs. J. C. Luning, as Treasurer, Defendant.

This is a suit wherein complainant prayed that the defendant be restrained and enjoined from insisting upon his demands for the deposit of additional current funds or marketable securities in the sum of \$123,600.00 or any other sum and that he be restrained and enjoined during the pendency of this suit and thereafter by final decree from revoking or causing to be revoked complainant's license or certificate of authority to transact the business of a surety company in this State. Temporary restraining order granted; a demurrer and motion to dissolve the temporary restraining order were filed; whereupon the Court entered an order sustaining the demurrer and granting motion to dissolve the injunction and dismissing bill of complaint. Case appealed to the Supreme Court. Motion to dismiss filed by complainant. Court granted the motion and suit was dismissed on June 23, 1928.

In the District Court of the United States for the Southern District of Florida
Filer-Cleveland Company, a Florida Corporation, Complainant, vs. Robert Pate, et al., and the State of Florida, Defendants

The suit was brought for the purpose of foreclosing a mortgage on certain property in Dade County, Florida, and it was alleged in the bill of complaint that the State of Florida had obtained as appeared of record a judgment against the defendant, Robert Pate, which said judgment created a lien upon the property described, but that any claim the State may have is inferior and subordinate to the right, title and interest of complainant. An answer was filed on behalf of the State.

In the Supreme Court of Florida.

First American Bank & Trust Company, a Banking Corporation of Florida, as Receiver of the Farmers Bank & Trust Company, a Banking Corporation of Florida, and Ernest Amos, Comptroller of the State of Florida, Appellants, vs. Town of Palm Beach, Florida, a Municipal Corporation,

organized and existing under and by virtue of the laws of the State of Florida, Appellee.

AND

First American Bank & Trust Company, a Banking Corporation of Florida, as Receiver of Farmers Bank & Trust Company, a Banking Corporation of Florida, et als., Appellants, vs. Board of Commissioners of Lake Worth Inlet District, a Corporation, Appellee.

These two cases were instituted in the Circuit Court for Palm Beach County where demurrers were filed to complainants' bills of complaint. The demurrers having been overruled by the Circuit Court, defendants appealed from said orders overruling said demurrers. The facts of the two cases being so nearly identical it was deemed advisable to consolidate the two cases—the facts being, the Town of Palm Beach had on deposit in the Farmers Bank & Trust Company at the time the bank closed its doors approximately \$1,162,755.54, and the Board of Commissioners of Lake Worth Inlet District had on deposit in said bank at that time approximately \$1,593,522.92. As security for this deposit each of said depositors held certain collateral in the form of Martin County bonds, and the Board of Commissioners also held certain surety bonds executed by Farmers Bank as principal. After the failure of the bank the depositors sold said collateral security, Town of Palm Beach realizing therefrom approximately \$289,658.01, and the Board of Commissioners of Lake Worth Inlet District realizing approximately \$730,605.33. These creditors here seek to prove the full amount of their respective claims without surrendering to the receiver the proceeds obtained from said collateral, and without deducting from the full amount of said claims the amounts realized from said sales of collateral. The Supreme Court reversed the orders overruling the demurrers, and the cases were remanded for further proceedings.

In the Circuit Court, Jackson County.

First National Bank of Graceville, a Corporation, Complainant, vs. Hinton Folsom, as Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the shares of stock of complainant bank for 1926 for State and County purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill were filed on December 5, 1927. Final decree was entered on July 19, 1928, granting a perpetual injunction herein.

In the Circuit Court, Charlotte County.

First National Bank of Jacksonville, Complainant, vs. P. K. Yonge, et al., Defendants.

This is a suit brought for the purpose of obtaining a decree settling to whom certain bequests contained in the last will and testament of the late Albert W. Gilchrist should be paid in order to fully and completely carry out the full intent and meaning of the said will. Final decree entered May 14, 1928, directing that the amounts designated in the will be paid to the State Board of Control for the use of the institutions named.

In the Circuit Court, Polk County.

First National Bank of Lakeland, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Jackson County.

First National Bank of Marianna, a Corporation, Complainant, vs. Hinton Folsom, as Tax Collector, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the shares of stock of complainant bank for 1926 for State and County purposes. Stipulation for intervention was entered into, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. A temporary restraining order was granted. Answers and demurrer to bill were filed on December 5, 1927. Final decree was entered on July 19, 1928, granting a perpetual injunction herein, from which decree an appeal was taken to the Supreme Court where the case is pending.

In the Circuit Court, Bay County.

First National Bank of Panama City, Complainant, vs. C. T. Porter, as Tax Collector, Defendant.

This was a suit brought for the purpose of enjoining the collection of taxes assessed against the capital stock, or shares of the complainant bank for the years 1925 and 1926. Demurrer and answer to bill was filed, together with briefs. On July 6, 1928, order was made overruling demurrer, also perpetually enjoining and restraining the defendant, his deputy and successors in office, from collecting or attempting to collect by levy upon and sale of the property of complainant the taxes assessed, etc., from which order the case was appealed to the Supreme Court where the decree of the Circuit Court for Bay county was reversed on December 6, 1928.

In the Circuit Court, Leon County.

First National Bank of St. Augustine, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A bill of complaint was filed in this case wherein it was prayed that the defendant be compelled to allow the claim of the First National Bank of St. Augustine against the Farmers Bank & Trust Company of West Palm Beach, Florida, which was in the hands of the Comptroller as a preferred claim on the ground that said bank acted merely as a collecting agency for money to be remitted to the St. Augustine bank, making the amount of the collection a trust fund which did not pass to the Comptroller as an asset of the bank. Demurrer to the bill was filed and argued and was overruled by the circuit judge. An appeal from that ruling was taken to the Supreme Court where the case is now pending.

In the Circuit Court, Polk County.

First State Bank of Winter Haven, a Corporation, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Leon County.

Florida Central & Gulf Railway Company, Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the case is now pending.

In the Supreme Court of Florida.

State of Florida, and Seward Investment Company, a Corporation, and Harry P. McGinley Company, a Corporation, Appellants, vs. Florida Inland Navigation District, a Special Taxing District, Appellee.

This was a suit against the State of Florida, brought in the Seventh Judicial Circuit in and for Volusia county, wherein the appellee here sought the validation and confirmation of \$1,887,000.00 of negotiable, interest bearing bonds. Objections to the validation and confirmation of said bonds were interposed by the State. The Court below, after hearing arguments as to all questions of law raised in the pleadings entered orders overruling all objections interposed and entered its final decree validating and confirming said bonds, from which order and decree the case was appealed to this Court where it is now pending.

In the Circuit Court, Leon County.

Florida Western & Northern Railroad Company, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of School District Taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Hardee County.

Floreco Corporation, Complainant, vs. S. W. Conroy, et al., Defendants.

This suit was brought in an effort to cancel certain tax certificates issued upon certain property of complainant in Hardee county, upon sale of such property because of the non-payment of taxes for the year 1925. Consent decree entered May 24, 1927, whereby complainant was to pay taxes without interest and penalty. Taxes paid and suit dismissed.

In the Circuit Court, Leon County.

M. G. Garris Properties, Complainants, vs. John W. Martin, as Governor, et al., Defendants.

This suit was brought for the purpose of testing the validity of Chapter

12016, Acts of 1927. Demurrer to bill of complaint was filed which was overruled, thereupon case was appealed to Supreme Court where judgment of the lower court was reversed. On June 30, 1928, appeal to United States Supreme Court was taken, where case was dismissed on October 15, 1928, for want of jurisdiction.

In the Supreme Court of Florida.

Guarantee Trust & Savings Bank, Complainant, vs. United States Trust Company, et al., Defendants.

This is a suit which was brought in the Circuit Court of Duval county, praying cancellation and rescision of a certain contract and agreement made July 15, 1922. Separate demurrers were filed. On July 31, 1924, an order was made sustaining the demurrers, from which order an appeal was taken to the Supreme Court on August 1, 1924. On October 7, 1924, motion for injunction was filed, upon which motion the case is now pending.

In the Circuit Court, Palm Beach County.

Harjim, Inc., a Corporation, et al., Complainants, vs. Roy A. O'Brannon, as Tax Collector of Palm Beach County, Florida, Defendant.

Ernest Amos, as Comptroller, Intervening Defendant.

A bill for injunction was filed in this case wherein it was prayed that said Tax Collector be temporarily restrained and enjoined from selling or offering for sale certain lands described in the said delinquent tax list as published, and as described. That upon final hearing the said injunction be made permanent; that the tax assessment and tax roll of said county for the year 1927 be declared null, void and of no effect. Restraining order denied, and amended bill was filed. Notice of application for intervention was filed on behalf of the Comptroller, which petition was granted, thereupon demurrer was filed on behalf of the intervening defendant.

In the Circuit Court, Hillsborough County.

Samuel T. Hickman, Complainant, vs. Joe Wingate, et al., Defendants.

This was a suit brought to foreclose a mortgage, and the Attorney General was made a party defendant because of a judgment obtained in the name of the Governor for the use of Hillsborough county on the estreature of an appearance bond.

In the Circuit Court, Palm Beach County.

Highland Glades Drainage District, Complainant, v. H. G. Greet et al. and State Board of Education et al., Defendants.

A petition in mandamus was filed in this case praying that defendants be compelled and enforced to pay the amounts due as tax liens as set forth in said petition, etc. Appearance on behalf of the State Board of Education was filed, also answer.

In the Circuit Court, Palm Beach County.

Highland Glades Drainage District, Complainant, vs. Highland Glades Farm Company et al., and State Board of Education of the State of Florida, et al., Defendants.

A petition in mandamus was filed in this case wherein it was prayed that an accounting of certain delinquent annual installment and maintenance taxes levied for the years 1922, 1923, 1924 and 1925 on the lands in the Highland Glades Drainage District in Palm Beach County, may be taken under

and by direction of this Court; that said delinquent taxes, penalties and costs of suit, together with reasonable attorney's fee, be fixed by this Court and declared a lien upon and against the said several tracts or parcels of land mentioned, etc. Appearance was filed on behalf of the State Board of Education on December 3, 1928.

In the Circuit Court, Duval County.

Iona Drainage District, Complainant, vs. A. P. Anthony, as sole Receiver of United States Trust Co., Ernest Amos, as Comptroller, and John C. Luning as State Treasurer, Defendants.

This is a supplementary proceeding wherein complainant filed petition alleging that it had deposited certain bonds to be held as a trust fund with the United States Trust Company, and that these bonds had been deposited by U. S. Trust Company in the office of the State Treasurer under the Trust Act; and that U. S. Trust Company was without authority to pledge such bonds in the office of the State Treasurer under the Trust Act. Answer was filed on behalf of John C. Luning on October 3, 1924.

In the Circuit Court, Leon County.

Kissimmee River Railway, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Polk County.

Lake Alfred State Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Polk County.

Lake Hamilton State Bank, a Corporation, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purporting to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Polk County.

Lake Wales State Bank, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year

1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Leon County.

Louisville & Nashville Railroad Co. et al., Complainants, vs. Ernest Amos, Comptroller, Defendant.

This is a suit brought seeking to enjoin the collection of taxes due on certain property of complainants for the year 1927. Demurrer was filed, and order overruling said demurrer was entered September 18, 1928, wherein it was ordered that the railroad companies immediately pay 20 per cent of taxes assessed and within a certain time thereafter 6.8 per cent, from which ruling the case was appealed to the Supreme Court. This Court has ordered that the 20 per cent tendered as alleged in the bill be paid to the Comptroller, which amount has been paid. Case still pending.

In the Circuit Court, Duval County.

J. C. Luning, as State Treasurer et al., Complainants, vs. The Guaranty Company et al., Defendants.

This is a suit brought for the purpose of foreclosing a mortgage given for the purpose of securing the payment of a certain promissory note executed and dated at Jacksonville, Florida, on the 23rd day of October, 1922, payable one year after date to the order of the United States Trust Company, one of the complainants, in the sum of \$34,500.00 with interest, etc., which note and mortgage was deposited in trust with J. C. Luning, State Treasurer.

In the Circuit Court, Dade County.

Miami Mortgage and Guaranty Company, Complainant, vs. Cornelius Thomas and Brother, Inc., et al., and the State of Florida, Defendants.

This suit was brought for the purpose of foreclosing a mortgage upon certain lots in Dade county in which lots it was alleged the State of Florida claimed an interest, etc. Appearance was filed on behalf of the State, wherein the interest of the State of Florida in respect to the matter of the said suit as set forth by the bill of complaint was submitted to the case and protection of the Court for such decree as might seem to the Court to be in accordance with law and equity on the facts set forth in the said bill. Final decree entered wherein it was ordered that the defendants pay to the complainants certain sums, and in default of such payment that the said property be sold to the highest bidder for cash, etc.

In the Circuit Court, Leon County.

Mark W. Munroe, Complainant, vs. Fons A. Hathaway, et al., Defendants.

A bill was filed in this suit praying that the defendants be enjoined from entering into any contracts or incurring indebtedness in excess of the estimated resources of said department for the current year, and from executing and awarding contracts for any of the specific projects mentioned in said bill. The Court entered an order restraining the defendants from executing any contracts, awarding any contracts for the construction of the works, roads or bridges specifically mentioned and described in the said bill of complaint. A demurrer to certain parts of said bill and demurrer to the bill as a whole, answer, and motion to dismiss said order, were filed. Demurrer sustained

and complainant allowed to amend his bill, and on hearing defendants were allowed to amend their answer. Thereupon three of said projects so enjoined were released, etc. Order overruling demurrer as amended was entered and denying motion to dissolve, from which ruling the case was appealed to the Supreme Court.

In the Circuit Court, Dade County.

C. L. Miller & Company, as Trustee, Complainant, vs. Callie H. Watson, a widow, et al., Defendants.

A petition was filed in this case by the Trust Company of Georgia wherein it was prayed that said trust company be substituted as complainant trustee in the above entitled cause for C. L. Miller, as trustee. Ernest Amos, Comptroller of this State, intervened and filed a petition protesting against the appointment of said trustee in the above cause. This cause came on for hearing on June 25, 1928, but the judge adjourned said hearing indefinitely in order that counsel for complainant could amend their petition.

In the Circuit Court, Duval County.

National Surety Company, Complainant, vs. Guaranty Trust and Savings Bank, et al., Defendants.

This is a suit brought by complainant where it prays to have an accounting taken of the amount due it under and by virtue of a certain written agreement dated March 1, 1922, by and between Guaranty Trust & Savings Bank and National Surety Company. Separate demurrers were filed on behalf of defendants, the fifth ground of each being sustained.

In the United States District Court, Northern District of Florida.

O'Leary Investment Company, Complainant, vs. John W. Martin, as Governor, et al., Defendants.

This suit was brought in an effort to enjoin and restrain defendants from levying any taxes or assessments in pursuance of Chapter 12016, Acts of 1927, and also from issuing, selling, or disposing of any bonds under or in pursuance of said act. Answer and motion to dismiss were filed on November 1, 1928.

In the United States District Court for the Northern District of Florida.

No. 1.

H. C. Rorick, et al., Plaintiffs, vs. The Board of Commissioners of Everglades Drainage District, a Corporation, Defendants.

A bill of complaint was filed in this suit praying for specific performance to compel the delivery of bonds under alleged contract by and between the plaintiffs and the defendants. Motion to dismiss such bill was filed, but has not been heard.

In the United States District Court for the Northern District of Florida.

No. 2.

H. C. Rorick, et al., Plaintiffs, vs. The Board of Commissioners of Everglades Drainage District, a Corporation, Defendants.

A bill of complaint was filed in this suit wherein plaintiffs, as owners of certain of the bonds already issued and outstanding, pray injunction to prevent the averred impairment of their claimed contract under the bonds issued by the defendant drainage district in conformity with Division 1, Title 7, Revised General Statutes of Florida, 1920, as amended from time to time,

and now being embraced in Sections 1160 to 1188, Revised General Statutes of Florida, and it is insisted that the bonds were, by virtue of Section 1183, issued under an alleged irrevocable contract with every holder of any bond or coupon, etc. And it is urged that an additional equity of their bill is found in the provision in Section 1178 of the Revised General Statutes, as amended. The prayer of the bill being to enjoin the carrying out of Chapter 12016, Acts of 1927, authorizing the board to issue \$20,000,000 additional bonds of the Everglades Drainage District; and, specifically, to enjoin the board from issuing new bonds, etc. A motion to dismiss was filed by the defendants also brief in support of the motion. Motion to dismiss the bill of complaint was denied, and decretal order for interlocutory injunction was entered. Answer was filed by defendants, also motion to strike parts of the answer was filed by plaintiffs, which motion was argued on December 29, 1928.

In the Circuit Court, Dade County.

Rose Lawn Realty Company, Complainant, vs. John W. Martin, et al., Defendants.

This is a suit brought for the purpose of enjoining and restraining the Board of Commissioners of the Everglades Drainage District from selling and delivering to Dillon, Read & Co., and Eldredge & Co., any bonds purporting to be issued under the authority of Chapter 12016, Acts of 1927, etc. Special appearance, also pleas to the jurisdiction of the Court were filed.

In the Circuit Court, Leon County.

A. N. Sakhnovsky, Complainant, vs. John W. Martin, et al., Defendants.

This is a suit brought for the purpose of seeking to have declared void and unconstitutional certain rules and regulations adopted by the Board of Commissioners of the Everglades Drainage District on April 10, 1928; also for the purpose of enjoining and restraining the board from issuing and delivering to Dillon, Reid & Co., and Eldredge & Co., or anyone else certain bonds issued in pursuance of Chapter 12016, Acts of 1927. Appearance for the defendants were filed, also demurrer, upon which a hearing was had before Judge Love in July, 1928.

In the Circuit Court, Franklin County.

Geo. W. Saxon, and Saint George Co-operative Colony, Complainants, vs. W. A. McRae, Commissioner of Agriculture, et al., Defendants.

This suit was brought for the purpose of enjoining and restraining the defendants from leasing or in any way interfering with submerged lands of the Apalachicola bay. A demurrer to the bill of complaint was filed, which demurrer was sustained. Case stands in *statu quo* awaiting decision from Supreme Court of the United States in the case of Apalachicola Land & Dev. Co., et al. vs. W. A. McRae.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the case is now pending.

In the Circuit Court, Leon County.

Seaboard Air Line Railway Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This is a suit brought for the purpose of seeking to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Brevard County.

Seth Peterson et ux., Complainants, vs. S. G. Owens et al., and Ernest Amos, as Comptroller, Defendants.

This suit was brought to foreclose a certain mortgage given to secure four promissory notes in the aggregate sum of \$19,000. Appearance was filed on behalf of Ernest Amos, as Comptroller. Motion was filed by solicitors for complainants moving that said cause be dismissed as to the defendants Cocoa Bank & Trust Co., and Ernest Amos, as Comptroller.

In the Circuit Court, Polk County.

Snell National Bank, a Corporation, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene in said cause. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Escambia County.

Southern Pine Extract Company, Complainant, vs. M. L. Bell, as Clerk Circuit Court, and Ernest Amos, as Comptroller, Defendants.

This suit was brought in an effort to cancel a certain tax certificate issued against certain property of complainant in Escambia County. Answer was filed on behalf of the defendants. Also special demurrer. Consent decree entered, taxes paid and suit dismissed.

In the Circuit Court, Santa Rosa County.

J. A. Spencer, Complainant, vs. Ernest Amos, Comptroller et al., Defendant.

This suit was brought in an effort to cancel certain tax certificates issued upon certain property in Santa Rosa county upon sale of such property at tax sale for the non-payment of taxes for the years 1912, 1923 and 1924. Settled by agreement, and all taxes paid. Suit dismissed.

In the Circuit Court, Polk County.

State Bank of Bartow, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Polk County.

State Bank of Haines City, Complainant, vs. J. P. Murdaugh, Tax Collector, Defendant.

Ernest Amos, Comptroller, Intervening Defendant.

This suit was brought for the purpose of enjoining the collection of taxes purported to be assessed against the capital stock of complainant for the year 1928. Application for intervention was filed on behalf of the Comptroller, also stipulation of counsel agreeing to such intervention, whereupon order was entered allowing Ernest Amos, as Comptroller, to intervene. Appearance for defendants will be filed on January 7, 1929.

In the Circuit Court, Dade County.

State of Florida, and John W. Martin, as Governor, et al., Complainants, vs. Southern Drainage District et al., Defendants.

This suit was brought for the purpose of removing cloud from title to certain State school lands in Dade county, the defendants claiming and asserting an interest in and title to said lands under and by virtue of a final decree of foreclosure and tax deeds. Demurrers on behalf of defendants were filed, and overruled, whereupon an appeal was taken to the Supreme Court, where decree of lower court was affirmed on April 1, 1927.

In the District Court of the United States, Northern District of Georgia, Atlanta Division.—No. 514.

State of Florida, and A. S. Wells, E. S. Mathews and Mamie G. Eaton, as and Constituting Florida Railroad Commission, Petitioners, vs. United States of America and Interstate Commerce Commission, Defendants.

This was a proceeding brought by the State of Florida, through the Attorney General, joined in by the Railroad Commission as a party plaintiff, to restrain the enforcement of an order made by the Interstate Commerce Commission in a case known as Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, Docket No. 183464, which order of the Interstate Commerce Commission if enforced would have the effect of annulling the right of the State of Florida to regulate intrastate rates on the transportation of logs by rail over the Atlantic Coast Line Railroad from points in Florida to other points entirely within the State of Florida. The pleadings alleged that the order of the Interstate Commerce Commission invalidates the sovereign rights of the State of Florida to regulate its own internal affairs, and that a sufficient basis of Federal power was not shown on the record. Application for a preliminary injunction was made, and the same is scheduled to be called up for final determination at New Orleans, Louisiana, on January 3, 1929, before a special statutory court of three judges.

In the Circuit Court, Leon County.

Tampa & Gulf Coast Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Leon County.

Tampa & Gulf Coast Ry. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain

taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the case is now pending.

In the Circuit Court, Leon County.

Tampa Northern R. R. Co., Complainant, vs. Ernest Amos, Comptroller, Defendant.

This is a suit seeking to enjoin and restrain the collection of certain taxes for the year 1925. Defendant filed a special demurrer, which demurrer was overruled and a temporary restraining order was granted, from which ruling an appeal was taken to the Supreme Court, where the case is now pending.

In the Circuit Court, Leon County.

Tampa Northern R. R. Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for defendant was filed on December 3, 1928.

In the Circuit Court, Leon County.

Tavares & Gulf Railroad Co., Complainant, vs. Ernest Amos, as Comptroller, Defendant.

This suit was brought in an effort to enjoin and restrain the collection of school district taxes for the year 1926. Appearance for the defendant was filed on December 3, 1928.

In the Circuit Court, Volusia County.

Henry J. Titus, Complainant, vs. Ernest Amos et al., Defendants.

This is a suit brought for the purpose of enjoining and restraining the collection of taxes from the Daytona and New Smyrna Inlet District for the year 1927, as provided in Chapter 11791, Acts of 1927.

In the Circuit Court, Leon County.

Y. L. Watson, Complainant, vs. Ernest Amos, as Comptroller, Defendant.

A petition was filed in this case praying that defendant be perpetually enjoined and restrained from issuing warrants as therein named on the Treasurer in payment of certain amounts provided for in Chapter 11905, Acts of 1927. Demurrer to bill was filed, and temporary restraining order granted October 12, 1927, whereupon said case was appealed to the Supreme Court, where the act in question was held unconstitutional.

In the Circuit Court, Leon County.

J. N. Willis et al., Complainants, vs. F. A. Hathaway, Chairman State Road Department, et al., Defendants.

This suit was brought by the tax payers of Levy county to enjoin the execution of a certain contract for the construction of part of Road No. 19, Levy county, and to enjoin the Comptroller from issuing warrants in payment therefor, and to enjoin the Treasurer from paying out any money on such warrants. Injunction denied by circuit court, and case appealed to the Supreme Court, where order of the circuit court was affirmed on March 28, 1928.

COMMON LAW

In County Judge's Court, Leon County.

Ernest Amos, as Comptroller, Plaintiff, vs. Albert Turnipseed, Defendant.

This is an action brought to foreclose a statutory lien as provided by Section 3 of Chapter 10183, Acts of 1925. Suit pending on demurrer to pleas.

In the County Court, Hillsborough County.

Barrack Publishing Co., Plaintiff, vs. Fred Sloan, doing business as Sloan Fruit Co., Defendant.

State Bank of Webster, through Ernest Amos, as Comptroller, and John F. Hays, Receiver, Garnishees.

This suit was brought in an effort to collect certain funds claimed to be due by the Sloan Fruit Company to Barrack Publishing Company. Answer of the Comptroller was filed on February 7, 1928.

In the Civil Court of Record, Dade County.

James R. Cooper, Individually and as Trustee, Plaintiff, vs. The Southern Bank & Trust Company, and Ernest Amos, as Comptroller, Defendants.

A declaration was filed in this case wherein it was alleged that the Southern Bank & Trust Company neglected and refused to pay certain checks given by plaintiff and that said checks were returned unpaid at a time when there was on deposit to the credit of the plaintiff, in said bank, an amount sufficient to pay said checks; also that deposits by checks were made and credited to the account of plaintiff by said bank when said bank was in an insolvent condition, but that it wrongfully neglected to disclose its insolvency to the plaintiff, and was forced to close its doors; that the said checks given for deposit by the plaintiff were collected thereafter and that by reason of the same the checks nor the proceeds derived therefrom did not become the property of the said Southern Bank & Trust Company, wherefore plaintiff brings this suit and claims \$2500. Appearance was filed for the Comptroller, also demurrer to the declaration, which demurrer was sustained, and plaintiff allowed additional time within which to file an amendment to his declaration.

In the Supreme Court of Florida.

L. M. Hiers, Sheriff, Plaintiff in Error, vs. Spencer Mitchell, Defendant in Error.

This case was appealed from the Circuit Court of Hillsborough County, and involved the constitutionality of House Bill No. 1053, now Chapter 12410, Acts of 1927, and known as the Tire and Tube Tax Law. The judgment of the lower court was reversed on February 22, 1927, whereby the law was held constitutional.

In the Circuit Court, Alachua County.

King Lumber Co., Plaintiff, vs. State Board of Control, Defendant.

This is a suit brought to recover a balance alleged to be due by the defendant to plaintiff on account of a contract for the construction of a building by plaintiff for defendant on the grounds of the University of Florida at Gainesville. Demurrer to plaintiffs replication was overruled, and case appealed to Supreme Court, where pending.

In the Supreme Court of Florida.

State of Florida, Plaintiff in Error, vs. Clarence Sullivan, Defendant in Error.

This case was appealed from the Circuit Court of Hillsborough County,

wherein it was held that Chapter 11975, Acts of 1927, known as the Court of Crimes Law, was held unconstitutional. Judgment Circuit Court reversed and petitioner ordered remanded.

In the Circuit Court, Leon County.

Park Trammell et al., as the Board of Commissioners of State Institutions, Plaintiffs, vs. DeLeon Naval Stores Company, a Corporation, et al., Defendants.

This is a suit brought against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,000.74. The executors of the estate of J. B. Conrad, deceased, have paid to the Board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. The case is still pending before the Court.

In the Circuit Court, Liberty County.

A. H. Wolyn, Plaintiff, vs. Apalachicola Northern Railroad Co. et al., Defendants.

This is a suit brought to recover damages alleged to have been sustained by failure of defendants to place cars for the shipment of certain Japanese seed cane of the value of \$1,694.59, with interest from April 1, 1921, and \$11,260.00 with interest from April 1, 1922. Pending on demurrer to amended declaration.

MANDAMUS

In the Supreme Court of Florida.

State ex rel. Ernest Amos, as Comptroller, Relator, vs. Paul D. Barns, as Judge, etc., et al., Respondents.

Petition was filed in this case praying for an alternative writ of prohibition to be issued, prohibiting further action in a certain mandamus proceeding in the Circuit Court, Dade county, against Ernest Amos, as Comptroller, wherein it was sought to have said Comptroller appoint a receiver for the Bank of Homestead. Said writ issued on October 31, 1927, and said judge cited to show cause why said writ should not issue. On December 1, 1927, the Court ordered that the rule theretofore issued be made absolute.

In the Supreme Court of Florida.

The State ex rel. Ernest Amos, Comptroller, Relator, vs. C. E. Chillingworth, Judge of the Fifteenth Judicial Circuit of Florida, Respondent.

A petition for writ of mandamus was filed in this case praying that the defendant be commanded forthwith to take jurisdiction of the petition of relator for confirmation of his actions in ascertaining that Farmers Bank & Trust Company was insolvent and in appointing the said First American Bank & Trust Company as receiver of said Farmers Bank & Trust Company. The petition was denied without prejudice.

In the Circuit Court, Dade County.

State ex rel. Ernest Amos, Comptroller, Relator, vs. Simon Swig and Ben Franklin Savings Institution, Inc., Respondent.

Petition was filed in this case asking for an alternative writ of mandamus wherein it was prayed that a time be set by the Court to grand and give to each and every bank examiner of the State of Florida access to all the books,

papers, records, securities and assets of all kinds of said respondent, etc. Alternative writ of mandamus issued. Stipulation entered into between all parties whereby suit was settled.

In the Circuit Court, Leon County.

State of Florida ex rel. W. H. Cox, Relator, vs. Ernest Amos, as Comptroller, Respondent.

This was a case brought by the relator seeking mandamus to compel respondent to pay out of the 1921 appropriation for the State Board of Health a balance or balances claimed to be due said relator for traveling expenses, etc. An alternative writ of mandamus was issued, and motion made by respondent to quash the writ. No action taken by Court.

In the Supreme Court of Florida.

State ex rel. Cudahy Packing Company, Relator, vs. H. Clay Crawford, Secretary of State, Respondent.

Petition for alternative writ of mandamus was filed in this case praying that respondent be commanded to file a certified copy of an amendment to the charter of relator as tendered and to issue thereon a certificate. Alternative writ issued. Respondent filed motion to quash said writ. Case still pending.

In the Circuit Court, Dade County.

State ex rel. R. H. Graham et al., Relators, vs. Ernest Amos, as Comptroller, Respondent.

A petition was filed in this case asking for an alternative writ of mandamus, wherein it was prayed that the respondent be required to appoint a receiver for the Bank of Homestead, Florida. Alternative writ issued. Motion to dismiss said writ was filed and order overruling said motion to quash was made on October 27, giving respondent until November 7th to answer, to which ruling respondent applied for and procured from the Supreme Court a rule *nisi* to the Circuit Court to show cause why writ of prohibition should not be issued, which said rule was on December 1, 1928, made absolute.

In the Circuit Court, Leon County.

State ex rel. Eugene Hawkins, Relator, vs. Ernest Amos, Comptroller, Respondent.

A petition in mandamus was filed in this case wherein it was prayed that by order of this Court the respondent be required to draw a warrant upon the Treasurer of the State of Florida, payable to relator in the sum of \$40.00 for each month from June 6, 1927, in the same manner as the Confederate pensioners of the State of Florida are paid and that said warrant each month be delivered to relator. Alternative writ of mandamus issued. A motion to quash was filed in behalf of respondent, also answer. Upon hearing the Court ordered that the motion for a peremptory writ of mandamus be overruled and denied, from which ruling the case was appealed to the Supreme Court, where answer and brief were filed on behalf of the Comptroller.

In the Circuit Court, Leon County.

State ex rel. Highlands County, etc., et al., Relators, vs. Ernest Amos, as Comptroller, Respondent.

Petition for alternative write of mandamus was filed in this case, wherein

it was prayed that the counties of Highlands, DeSoto, Hernando, Martin, Okeechobee and Polk shall have apportioned its proportion of the assessment made and entered by the Comptroller, Treasurer and Attorney General on the 21st day of April, 1927, upon the rollin stock, appurtenance and personal property subject to taxation of the Seaboard Air Line Railway Company, as returned by it as of January 1, 1927. Alternative writ of mandamus issued, and respondent's return was filed on the 29th day of August, 1927.

In the Supreme Court of Florida.

State ex rel. Islands, Incorporated, Plaintiff, vs. Nathan Mayo, as Commissioner of Agriculture, Defendant.

A petition in mandamus was filed in this case wherein it was shown that plaintiff made an offer to the Trustees of the Internal Improvement Fund for a certain piece of property in Palm Beach county, said offer being made on certain conditions, and was for the total sum of \$4,437.50; that a deed to said property was duly executed and signed but that the seal of the Commissioner of Agriculture was not placed upon said deed by the defendant; said petition praying that a writ of mandamus be issued requiring this defendant as Commissioner of Agriculture, and as keeper of the Seal of the Department of Agriculture of the State, to affix the seal of the said Department to the said deed forthwith, and also commanding said defendant after the affixing of the seal as aforesaid to deliver said deed to plaintiff. Alternative writ issued. Answer and brief were filed on behalf of defendant, and oral argument was had on November 27, 1928. Alternative writ quashed December 22, 1928.

In the Circuit Court, Leon County.

State ex rel. Manatee County Building & Loan Association, Complainant, vs. H. Clay Crawford, Secretary of State, Defendant.

This is a suit wherein complainant prays that writ of mandamus be granted, commanding and requiring defendant to immediately file in his office a certified copy of resolution increasing the capital stock of complainant, and to duly certify to copy thereof to be filed in office of the Clerk of the Circuit Court of Manatee County, Florida.

In the Circuit Court, Alachua County.

State ex rel. E. C. F. Sanchez and Mabel A. B. Sanchez, Complainants, vs. S. H. Wienges, Clerk Circuit Court, Defendant.

The complainant filed a bill for a writ of mandamus to issue to cause the appellee to permit the redemption of certain tax certificates, alleging that such redemption was authorized by Chapter 7372, Laws of 1917. The defendant filed a demurrer to the bill, and the case is now pending. Case papers lost.

In the Circuit Court, Leon County.

State ex rel. Ruth Sandlin, a Minor, by Wm. Hodges, her Next Friend, Relator, vs. State Board of Education, Respondent.

Petition for writ of mandamus was filed in this case praying that relator be awarded a scholarship to the Florida State College for Women for the year 1924 from Hamilton county, in accordance with Chapter 9134, Acts of 1923, Laws of Florida. Alternative writ issued. Motion to quash alternative writ was filed by respondent upon which motion suit is now pending.

In the Supreme Court of Florida.

State ex rel. John S. Taylor, Relator, vs. H. Clay Crawford, as Secretary of State, etc., Respondent.

Relator filed his petition herein praying that a writ of mandamus do issue commanding the respondent to accept the filing fee of relator in order that relator might become a qualified candidate for the nomination for the office of Governor of the State of Florida. Peremptory writ issued.

In the Supreme Court of Florida.

State ex rel. Ellis Woodworth, Relator, vs. Ernest Amos, Comptroller, Respondent.

This is a suit wherein relator prays that a writ of mandamus be granted, commanding and requiring respondent to pay to him as an inspector in the Bureau of Inspection in the Department of Agriculture of the State of Florida salary for the months of February, March, April, May and from June 1st to June 24th, 1928. Alternative writ issued. Answer, motion to quash and briefs were filed. The Court on December 5, 1928, ordered that said alternative writ heretofore issued be quashed. Petition for rehearing filed and rehearing granted December 18th, 1928.

In the Supreme Court of Florida.

State ex rel. Pittsburg Plate Glass Company, a Corporation, Relator, vs. H. Clay Crawford, Secretary of State of the State of Florida, Respondent.

Petition was filed in this case asking for an alternative writ of mandamus, wherein it was prayed that respondent be commanded to file a certified copy of an amendment to the charter of relator as tendered, and to issue thereon a certificate. Alternative writ issued, wherein respondent was commanded to file said amendment to said charter of relator and to issue thereon a certificate, which was done by respondent and case closed.

IN BANKRUPTCY

In the United States District Court, Southern District of Florida.

Anna E. Curtis et al., Petitioners, vs. Dade County Security Company, a Florida Corporation, Defendants.

A petition was filed in this case seeking to have the Dade County Security Company adjudged a bankrupt. A petition for intervention was filed by Ernest Amos, Comptroller, and an order entered allowing such intervention. There was also a petition for intervention and motion to dismiss filed by Equitable Trust Company of New York, and an order entered allowing such intervention. A motion was filed by Dade County Security Company to dismiss the involuntary petition. There was an order dismissing the petition on February 8, 1928, from which order an appeal was taken to the United States Circuit Court of Appeals, Fifth Circuit.

In the United States District Court, Northern District of Florida.

In re: Chipley Packing Company, a Bankrupt.

The trustee of the estate of the above bankrupt filed written objections to the full allowance of the claim of the State of Florida and the County of Washington for taxes against assets of said estate. Answer to objections were filed. Agreement entered whereby matter was settled upon payment of taxes on fifty per cent basis. Matter closed.

In the Supreme Court of the United States—October Term, 1928—No. 393.
John G. Rouse, Executor of William C. Rouse, Petitioner, vs. United States, Respondent.

The petitioner herein filed in the Supreme Court of the United States a petition for a writ of certiorari to the Court of Claims—the petitioner contending that the estate tax of 1924 was unconstitutional to the extent of 25 percent—that is, the excess over the amount uniformly collected from all the States. The Attorney General of Florida, upon leave of Court granted October 1, 1928, filed brief on behalf of the State of Florida, as *amicus curiae*. On October 22, 1928, the Court denied said petition for certiorari. The purpose of this case was to have declared unconstitutional the rebate provision of the inheritance tax law which has the effect of invalidating the provision of Article IX of the Constitution of Florida which provides that no inheritance tax shall be levied in this State. The effect of the decision is to uphold the constitutionality of the law which was attacked.

QUO WARRANTO.

Authority was granted by the Attorney General to the parties whose names appear below to institute proceedings in quo warranto. A statement of the purpose of the suit is stated in each case.

Leonard B. Newman, Esq., Titusville, Fla. January 3, 1927.

This suit was brought for the purpose of testing the right of one J. B. Brewer to hold the office of chief of police of the City of Titusville.

Hon. R. S. Field, Orlando, Fla. January 10, 1927.

This was a suit brought to test the right of certain parties to hold the offices of marshal, tax collector and tax assessor and treasurer of the Town of Bithlo, Orange County, Florida.

Messrs. Tedder & Sellers, Fort Lauderdale, Fla. January 10, 1927.

This proceeding was instituted in Broward county for the purpose of testing the right of one J. S. Stephens to hold the office of town clerk and tax assessor of the Town of Deerfield.

W. A. Shepard, Jr., Esq., Fort Myers, Fla. January 29, 1927.

This proceeding was brought for the purpose of cancelling a ferry franchise granted by the Board of County Commissioners of Lee county in the year 1925, the holders of said franchise having failed to give the service agreed upon.

Messrs. Brandon, Gage, Hancock & Polhill, Clearwater, Fla. February 11, 1927.

This was an action brought to test the validity of an act of the Legislature extending the limits of the Town of Largo.

Messrs. Dame & Rogers, Fort Pierce, Fla. March 14, 1927.

This suit was brought for the purpose of testing the right of the City of Stuart to exercise corporate functions upon certain territory within the city limits.

Messrs. MacFarlane, Pettingill, McFarlane & Fowler, Tampa, Fla. March 24, 1927.

This suit was brought for the purpose of testing the validity of Chapter 10394, Acts of 1925, entitled "An Act to extend the territorial limits of the City of Clearwater, Florida, and to provide for the taxation of the annexed territory."

McKinney Barton, Esq., Tampa, Fla. March 24, 1927.

This suit was brought for the purpose of determining by what authority the City of St. Petersburg claims to have and exercise jurisdiction over certain property in Pinellas county.

Messrs. Malone & Ellis, Punta Gorda, Fla. April 4, 1927.

This suit was brought for the purpose of testing the corporate powers of the Town of Cleveland, Charlotte county.

Messrs. Leitner & Leitner, Arcadia, Fla. April 23, 1927.

This suit was brought for the purpose of testing the constitutionality of Section 10320, Acts of 1925, incorporating the Town of Avon Park, Florida.

Messrs. Watson, Pasco & Brown, Pensacola, Fla. May 18, 1927.

This is an action brought to enjoin and restrain Edward W. Peake and Bertha E. Peake from asserting title to or claiming right to occupy any portion of key lots 21, 24, 25, 28 and 29, block 35, City of Pensacola, except a parcel 15 feet by 34 feet 10 inches, etc.

Murray Sams, Esq., DeLand, Fla. June 15, 1927.

This suit was brought for the purpose of testing the right of one W. E. Swoope to hold the office of city commissioner of the City of New Smyrna, Volusia county.

Mr. R. Don McLeod, Jr., Apalachicola, Fla. June 18, 1927.

This suit was brought for the purpose of revoking a franchise given by the county commissioners of Franklin county, to Paquette, et al., to build a toll bridge across the Apalachicola river and East bay, such franchise being authorized by the 1925 Legislature.

Fred H. Davis, Attorney General. June 27, 1927.

This suit was brought to test an act passed at the 1927 session of the Legislature, known as the court of crimes law.

Messrs. Mabry, Reaves & Carlton, Tampa, Fla. June 28, 1927.

This suit was brought to test the constitutionality of Chapter 10207, Acts of 1925, as amended by Senate Bill No. 113, Acts of 1927, known as the plumbing act.

Messrs. Botts, Davis, Davis & Field, Miami, Fla. July 11, 1927.

This is a suit brought for the purpose of testing the right of certain officials of the City of Hollywood to exercise certain duties, etc.

Messrs. Leitner & Leitner, Arcadia, Fla. August 3, 1927.

This suit was brought for the purpose of testing the right of the board of supervisors of Charlotte Improvement District No. 2, to hold office and exercise the rights and powers granted under Chapter 11873, Special Laws of 1927.

W. D. Bell, Esq., Arcadia, Fla. August 26, 1927.

This is a suit brought for the purpose of testing the right of certain officials of the Town of Lake Placid, Highlands county, to hold office and exercise the rights and powers thereof under and by virtue of an election held in said town.

Hon. J. E. Dean, St. Petersburg, Fla. August 27, 1927.

This was a suit brought for the purpose of testing the right of the commissioners of the Town of Pass-a-Grille to hold office.

John T. G. Crawford, Esq., Jacksonville, Fla. September 9, 1927.

This suit was brought for the purpose of testing the validity of House Bill No. 248, known as the "Conner's Highway Bill," said bill having been introduced and passed at the 1927 session of the Legislature.

Messrs. Stuart & Stuart, DeLand, Fla. September 15, 1927.

This was a proceeding brought to test the authority of one Earl W. Brown to hold the office of mayor and city commissioner of the City of DeLand, Volusia county.

Messrs. Stuart & Stuart, DeLand, Fla. September 15, 1927.

This was a proceeding brought to test the authority of one C. L. Heath to hold the office of city commissioner of the City of DeLand, Volusia county.

Messrs. Stuart & Stuart, DeLand, Fla. September 15, 1927.

This was a proceeding brought to test the authority of one H. L. Larmon to hold the office of city commissioner of the City of DeLand, Volusia County.

Hon. A. T. Stuart, Tampa, Fla. September 21, 1927.

This is a proceeding brought for the purpose of testing the right of the Live Stock Sanitary Board to make appointment of State Veterinarian.

Hon. Mitchell D. Price, Miami, Fla. October 20, 1927.

This was a suit brought for the purpose of testing the right of the Town of Fulford to exercise jurisdiction over certain additional territory recently taken in by said town by a special act of the Legislature.

Messrs. Clyde Atkinson and Robert Parker, Tallahassee, Fla. October, 1927.

This suit was brought for the purpose of testing a certain election held on the 7th day of October, 1927, in Special Tax District No. 6, Wakulla county.

Messrs. McCune, Casey, Hiaasen & Fleming, Fort Lauderdale, Fla. November 8, 1927.

This suit was brought for the purpose of ousting from office a newly elected councilman of the Town of Deerfield.

Mr. H. B. Fredrick, Daytona Beach, Fla. November 19, 1927.

This suit was brought for the purpose of testing the right of one H. Casper Silvers to hold the office of city commissioner of the City of New Smyrna, Volusia county.

Murray Sams, Esq., DeLand, Fla. March 21, 1928.

This suit was brought for the purpose of testing an act passed at the 1927 session of Legislature authorizing the county commissioners to buy certain property for courthouse purposes.

Hon. H. V. McClellan, Blountstown, Fla. March 27, 1928.

This suit was brought for the purpose of testing a certain election held in the Town of Wewahitchka, Fla.

Messrs. Oakley & Cade, Lakeland, Fla. April 9, 1928.

This suit was brought for the purpose of testing the right of one D. W. Thorpe, Jr., to hold the office of city manager of the City of Auburndale, Fla.

Hon. J. A. Scarlett, State Attorney, DeLand, Fla. April 14, 1928.

This was a proceeding brought to test the authority of three city commissioners of the City of DeLand to hold office.

Hon. William Fisher, Pensacola, Fla. June 19, 1928.

This was an action brought seeking to enforce the provisions of the statutes of Florida, prohibiting the formation of combinations or trusts for the purpose of controlling prices of gasoline.

Hon. C. L. Waller, Tallahassee, Fla. June 27, 1928.

This action was brought for the purpose of ascertaining by what warrant one W. L. Clark claimed to hold out and exercise the title, office, privilege, powers and franchises of nominee of the Democratic party of Leon county for the office of tax assessor of said county.

Hon. L. B. McGregor, Tampa, Fla. June 30, 1928.

This suit was brought for the purpose of testing the validity of election in Hillsborough county for the nomination of county commissioners.

Hon. William Fisher, Pensacola, Fla. July 18, 1928.

This suit was brought for the purpose of testing the right of a certain newly appointed pilot to hold office.

Messrs. Carlton & Owens, Tampa, Fla. August 2, 1928.

This suit was brought for the purpose of testing the nomination of one J. H. Young for office of county commissioner in District No. 5, Manatee county.

Hon. W. Kenneth Barnes, Dade City, Fla. August 15, 1928.

Suit to test right of I. W. Smith to exercise rights, privileges, etc., of nominee of Democratic party for tax collector, Pasco County, Florida.

Judge Isaac A. Stewart, DeLand, Fla. August 13, 1928.

This suit was brought in an effort to oust the port commissioners of the Daytona-New Smyrna Inlet Corporation, Volusia county.

Hon. Francis P. Whitehair, DeLand, Florida. September 17, 1928.

This suit was brought to test the right of one George W. Abbott to hold the office of city commissioner of the City of New Smyrna, Volusia county.

Mr. Philip C. Gorman, Leesburg, Fla. September 19, 1928.

This is a suit brought to test the right of Minnie E. Casson to hold the office of school trustee of Special Tax School District No. 23 of Fruitland Park, Lake county.

Carl F. Grossley, Esq., Ocala, Fla. October 5, 1928.

This was an action to test the corporate existence of Fort McCoy Special Tax School District No. 34 as extended.

Mr. John M. Coe, Pensacola, Fla. October 14, 1927.

This is a suit wherein authority was given to file a petition praying that alternative writ of mandamus issue out of the Circuit Court of Jackson county directed to D. H. Oswald, county judge, directing and commanding him forthwith to issue his warrant for the arrest of a certain party as required by law, upon the charge of taking and attempting to take certain fresh water fish from the fresh waters of Jackson county, contrary to the provisions of Chapter 11828.

Mr. R. S. Field, Orlando, Fla. October 29, 1928.

This was an action brought to test the right of W. P. Chapman as city councilman of the City of Orlo Vista to exercise certain rights under and by virtue of an act of incorporation passed by the Legislature of the State of Florida in 1927.

Mr. Alfred P. Marshall, Clearwater, Fla. October 29, 1928.

This was an action brought to test the validity of certain special acts passed at the 1927 session of the Legislature wherein certain territory was annexed to and made a part of the City of Bowling Green.

IX.

TABULATED REPORT OF CRIMINAL CASES

Handled by the Attorney General in Which Opinions Were Filed by the Supreme Court During the
Years 1927 and 1928

CASES DISPOSED OF DURING JANUARY TERM, 1927

Name of Offender	Offense	County	Court	Disposition
C. F. Adkinson	Aggravated Assault	Walton	Circuit	Affirmed
J. E. Ballard	Selling Liquor	Santa Rosa	Circuit	Reversed
D. C. Bass	Habeas Corpus	Brevard	Circuit	Affirmed
Dewey Booker	Breaking and Entering	Santa Rosa	Circuit	Reversed
Charlie Brown	Habeas Corpus	Volusia	Circuit	Remanded for Sentence
George Burns	Robbery	Dade	Criminal	Dismissed
Lester B. Miller	Robbery	Dade	Criminal	Dismissed
W. L. Candler	Receiving Stolen Goods	Duval	Criminal	Affirmed
H. R. Chase	Habeas Corpus	Dade	Circuit	Reversed
Rufus Chesser	Murder, 1st Degree	Clay	Circuit	Re-affirmed
Winston J. Crawford	Embezzlement	Dade	Criminal	Reversed, on Rehearing, Affirmed
R. S. Crenshaw	Grand Larceny	Duval	Criminal	Reversed
Raymond Down	Habeas Corpus	Volusia	Circuit	Dismissed
John F. Dwyer	Embezzlement	Dade	Criminal	Reversed
C. R. Ferguson	Violating Prohibition Law	Alachua	Circuit	Dismissed
Noah Greene	Murder, 1st Degree	Broward	Circuit	Affirmed
Jesse Helton	Uttering Forged Check	Escambia	Ct. of Rec.	Affirmed

CASES DISPOSED OF DURING JANUARY TERM, 1927—(Continued)

Name of Offender	Offense	County	Court	Disposition
Sherman Howard	Murder, 2nd Degree	Okaloosa	Circuit	Affirmed
Gordon Jackson	Manslaughter	Taylor	Circuit	Reversed
West Jackson	Aggravated Assault	Leon	Circuit	Affirmed
John Jones et al.	Habeas Corpus	Pinellas	Circuit	Affirmed
J. P. Kennedy	Receiving Stolen Goods	Palm Beach	Criminal	Affirmed
O. P. Kirkland	Murder, 1st Degree	Duval	Circuit	Affirmed
Arthur Lane	Murder, 2nd Degree	Hillsborough	Criminal	Affirmed
Mack Lewis et al.	Murder, 1st Degree	Lake	Circuit	Affirmed
A. W. Linton	Habeas Corpus	Dade	Circuit	Dismissed
Lee Moore		Clay	Circuit	Dismissed
Willis Moscovitz		Palm Beach	Criminal	Dismissed
Louis Moseley	Manslaughter	Okaloosa	Circuit	Affirmed
Brewster Moses	Manslaughter	Taylor	Circuit	Affirmed
Alexander Murray	Embezzlement	Hillsborough	Criminal	Affirmed
LeRoy Orme	Certiorari	Lee	Circuit	Quashed
Raymond L. Osteen	Manslaughter	Suwannee	Circuit	Affirmed
Floyd Pearce	Manslaughter	Columbia	Circuit	Reversed
H. L. Pelton	Forgery	Palm Beach	Criminal	Affirmed
I. O. Percifield	Larceny	Palm Beach	Criminal	Reversed
Harold E. Phillips	Aggravated Assault	Polk	Criminal	Affirmed
Mark C. Powell	Murder, 1st Degree	Duval	Circuit	Affirmed
Jesse Quinn	Habeas Corpus	St. Lucie	Circuit	Affirmed
R. P. Reinmiller	Keeping Gambling House	Duval	Criminal	Affirmed
Jack Sawyer	Breaking and Entering	Hillsborough	Criminal	Dismissed
Meyer Silberstein	False Pretenses	Dade	Criminal	Affirmed
Albert Clinton Smith	Grand Embezzlement	Duval	Criminal	Reversed

James M. Stanley	Manslaughter	Dade	Criminal	Affirmed
Frank Walker	Manslaughter	Union	Circuit	Affirmed
E. E. White	Unlawful Possession of Mullet	Escambia	Ct. of Rec.	Reversed
M. F. Whitton	Desertion	Walton	Criminal	Affirmed

CASES DISPOSED OF DURING JUNE TERM, 1927

Pearl Adams	Murder	Brevard	Circuit	Dismissed
George Alford and Ned Alford	Assault to Murder	Escambia	Ct. of Rec.	Dismissed
Ernest Amos, ex parte	Habeas Corpus	Leon	Supreme	Discharged
Tom Arnold	Habeas Corpus	Dade	Circuit	Reversed
Nellie Austin	Perjury	Walton	Circuit	Affirmed
James Autrey	Rape	Dade	Circuit	Affirmed
Ollinger Baggett	Arson	Okaloosa	Circuit	Reversed
Berry Benton .....	.....	Charlotte	Circuit	Dismissed
Carter Bloodgood	Larceny	Hillsborough	Criminal	Reversed
Chas. O. Braham	Confidence Game	Dade	Criminal	Reversed
Talton A. Branch	Murder, 1st Degree	Hillsborough	Criminal	Affirmed
Raiford Branning	Perjury	Columbia	Circuit	Reversed
Prince Brantley	Withholding Support	Jackson	Circuit	Dismissed
C. I. Butler	Manslaughter	Columbia	Circuit	Dismissed
Joe Butler	Manslaughter	Escambia	Circuit	Affirmed
Joe Campbell	Larceny	Okaloosa	Circuit	Affirmed
				Re-hearing
				Granted
James Carragain .....	.....	Dade	Criminal	Dismissed
Monroe Cheatham	Perjury	Walton	Circuit	Affirmed
A. B. Christie	Rape	Orange	Circuit	Reversed
Albert Collinsworth	Breaking and Entering	Okaloosa	Circuit	Affirmed
William P. Cope	Rape	Taylor	Circuit	Dismissed
Albert Davis	Perjury	Walton	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM, 1927—(Continued)

Name of Offender	Offense	County	Court	Disposition
Harry Delaney	Murder, 2nd Degree	Hillsborough	Criminal	Affirmed
Wayne K. Dickens .....	.....	Hillsborough	Criminal	Dismissed
Galloway Dixon .....	.....	Alachua	Circuit	Dismissed
Cleo Drew, et al.	Robbery	St. Johns	Circuit	Affirmed
Annie Fields	Perjury	Walton	Circuit	Affirmed
George Flynn .....	.....	Dade	Criminal	Dismissed
Willie Gary	Habeas Corpus	St. Lucie	Circuit	Affirmed
Chesley Gavin	Larceny	Okaloosa	Circuit	Dismissed
Josh Gavin	Larceny	Okaloosa	Circuit	Dismissed
Sampson Gavin	Larceny	Walton	Circuit	Affirmed
Lester Gildrei and John Kennie	Receiving Stolen Goods	Hillsborough	Criminal	Reversed
James Hall	Unnatural and Lascivious Act	Volusia	Circuit	Affirmed
Moulton Harrell	Violation Liquor Law	Walton	Circuit	Affirmed
W. B. Henderson and Thos. Costello.	Murder, 1st Degree	Hillsborough	Circuit	Affirmed
J. H. Henry	Violation Sec. 5092 R. F. S.	Polk	Circuit	Affirmed
Wade Hill .....	.....	Santa Rosa	Circuit	Dismissed
James Jones	Aggravated Assault	Volusia	Circuit	Dismissed
Will Jones .....	.....	Dade	Criminal	Dismissed
Reuben and Will Kennedy	Manslaughter	Okaloosa	Circuit	Affirmed
Charlie Knight	Keeping Gambling House	Santa Rosa	Circuit	Affirmed
John Lee	Murder, 2nd Degree	Levy	Circuit	Dismissed
John R. Leigar .....	.....	Dade	Criminal	Dismissed
Jack Lock	Murder, 1st Degree	Escambia	Circuit	Affirmed
A. B. Martinez	Breaking and Entering	Hillsborough	Criminal	Affirmed
Will Mathews	Manslaughter	Orange	Circuit	Affirmed

C. G. Meigs	Violation Fish Law	Santa Rosa	Circuit	Affirmed
E. O. McCurely	Larceny	Okaloosa	Circuit	Reversed
U. W. Norris	Embezzlement	Escambia	Ct. of Rec.	Dismissed
John Norris	Obtaining Money by False Pretense	Santa Rosa	Circuit	Affirmed
Clayton Pennington	Habeas Corpus	Dade	Circuit	Affirmed
H. B. Parker	Assault to Rape	Escambia	Circuit	Affirmed
				Petition
				Re-hearing
				Granted
Ralph Pickeron	Murder, 2nd Degree	Walton	Circuit	Affirmed
A. Pope	Larceny	Walton	Circuit	Reversed
Britt Pringle	Murder, 1st Degree	Duval	Circuit	Affirmed
Arthur Reed, alias etc.	Murder, 1st Degree	Pinellas	Circuit	Affirmed
Steve B. Roberts	Murder, 2nd Degree	Sarasota	Circuit	Affirmed
Willie Robertson	Violation Liquor Law	Escambia	Ct. of Rec.	Affirmed
Joseph Romano and Lino Ruiz	Violation Sec. 5509, R. G. S.	Hillsborough	Criminal	Affirmed
Jack Sawyer	Breaking and Entering	Hillsborough	Criminal	Affirmed
Charles C. Segars	Highway Robbery	Dade	Criminal	Reversed
L. S. Self	Habeas Corpus	Levy	Circuit	Dismissed
S. J. Sirmans	Habeas Corpus	Lee	Circuit	Reversed
John Smith		Dade	Criminal	Dismissed
J. C. Stewart	Habeas Corpus	Orange	Circuit	Affirmed
M. J. Vickery		Dade	Criminal	Dismissed
H. E. Williams	Violation Banking Law	Jackson	Circuit	Affirmed
R. L. Woodward and L. M. Johnson .	Uttering Forged Check	Escambia	Ct. of Rec.	Dismissed
Geo. Yarborough	Murder, 2nd Degree	Orange	Circuit	Affirmed

CASES DISPOSED OF DURING JANUARY TERM, 1928.

Name of Offender	Offense	County	Court	Disposition
Homer Addison	Breaking and Entering	Charlotte	Circuit	Affirmed
A. M. Albea .....	.....	Hillsborough	Circuit	Dismissed
Geo. Alford and Ned Alford	Assault to Murder	Escambia	Ct. of Rec.	Dismissed
John Almerigotti	Violation Liquor Law	Palm Beach	Circuit	Reversed
T. E. Bargesser	Larceny	Hillsborough	Criminal	Affirmed
T. E. Bargesser	Larceny	Hillsborough	Criminal	Reversed
Berry Benton	Stealing	Charlotte	Circuit	Affirmed
Mitchell Blomquist and Anna M. Prouty	Adultery	Polk	Criminal	Affirmed
Wm. B. Bogert, Jr.	Perjury	Hillsborough	Criminal	Affirmed
Rufus Baggett et al.	Breaking and Entering	Santa Rosa	Circuit	Dismissed
Lonnie Booker	Manslaughter	Santa Rosa	Circuit	Affirmed
Bud Boyett	Breaking and Entering	Okaloosa	Circuit	Reversed
Leon Brownell .....	.....	Holmes	Circuit	Dismissed
Fred Brownlee et al.	Murder, 1st Degree	Indian River	Circuit	Affirmed
P. Brazier	Receiving Stolen Property	Dade	Criminal	Reversed
J. W. Buchanan	Murder, 1st Degree	Taylor	Circuit	Affirmed
Roosevelt Bullard	Murder, 1st Degree	Brevard	Circuit	Affirmed
George Bunkley	Murder, 1st Degree	Volusia	Circuit	Reversed
George Burns	Highway Robbery	Dade	Criminal	Reversed
George Burns	Highway Robbery	Dade	Criminal	Reversed
William G. Burns	Bigamy	Dade	Criminal	Affirmed
Joe Campbell	Larceny	Okaloosa	Circuit	Reversed
Antonio Castillo .....	.....	Hillsborough	Criminal	Dismissed
Daniel P. Chesser	Withholding Support	Hillsborough	Criminal	Reversed

Will Cole	Murder, 1st Degree	Pinellas	Circuit	Reversed
J. A. Conner et al.	Murder, 1st Degree	Gilchrist	Circuit	Affirmed
W. C. Cooper	Assault to Murder	Orange	Criminal	Affirmed
Peter Corlise	Larceny	Hillsborough	Criminal	Reversed
Oscar W. Craig	Embezzlement	Volusia	Circuit	Affirmed
W. J. Daniel	Violating Banking Law	Jackson	Circuit	Reversed
Benjamin E. Darby .....	.....	Osceola	Circuit	Dismissed
Arthur Davis	Murder, 1st Degree	Volusia	Circuit	Affirmed
Gordon Denmark and Berta Hall	Murder, 1st Degree	Duval	Circuit	Affirmed
Al Dwyer	Grand Larceny	Dade	Criminal	Affirmed
G. W. Elkins	Embezzlement	Dade	Criminal	Reversed
John Everett	Murder, 1st Degree	Hamilton	Circuit	Dismissed
Henry Ferguson .....	.....	Hillsborough	Criminal	Dismissed
Sylvester Fernandez .....	.....	Hillsborough	Criminal	Dismissed
Filey Fewox and Henry Caruthers	Habeas Corpus	Hillsborough	Circuit	Dismissed
Haywood Foy	Manslaughter	Dixie	Circuit	Affirmed
W. G. Gilcrease	Violating Prohibition Law	Taylor	Circuit	Affirmed
H. E. Goolsby	Violating Liquor Law	Polk	Circuit	Affirmed
H. M. Hires	Habeas Corpus	Hillsborough	Criminal	Reversed
Richard Holt	Manslaughter	Escambia	Circuit	Affirmed
Howard Hood and Randolph Hood	Larceny	Walton	Circuit	Reversed
Ernest Houseman	Perjury	Washington	Circuit	Dismissed
Melvin Johnson .....	.....	Volusia	Circuit	Dismissed
Reta Kelly .....	.....	Dade	Circuit	Dismissed
David S. Kloss, Jr., Stephen A. Guilfoyle	Robbery	Pinellas	Circuit	Reversed
A. Linsmore	Possessing Liquor	Orange	Criminal	Affirmed
Nap Lovett	Manslaughter	Osceola	Circuit	Affirmed
Daniel T. Lowe	Rape	Duval	Circuit	Affirmed
Walker L. Marks	Habeas Corpus	Monroe	Circuit	Affirmed

CASES DISPOSED OF DURING JANUARY TERM, 1928—(Continued)

Name of Offender	Offense	County	Court	Disposition
Damon Mock	Assault to Murder	Santa Rosa	Circuit	Affirmed
Didney Morris	Receiving Stolen Property	Palm Beach	Criminal	Affirmed
H. S. McAllister .....	.....	Dade	Criminal	Dismissed
T. H. McAllister	Larceny	Leon	Circuit	Dismissed
Chas. C. McCormick	Desertion	Bay	Circuit	Reversed
G. A. McLeod	Habeas Corpus	Dade	Circuit	Discharged
U. S. Norriw	Embezzlement	Escambia	Ct. of Rec	Dismissed
Alonzo Padgett	Murder, 1st Degree	Taylor	Circuit	Reversed
H. B. Parker	Assault to Rape	Escambia	Circuit	Reversed
Joe Parish	Violating Liquor Law	Polk	Criminal	Affirmed
J. F. Pearce	Murder, 2nd Degree	Baker	Circuit	Affirmed
M. L. Pelt	Carnal Intercourse	Wakulla	Circuit	Affirmed
John Peterson	Murder, 1st Degree	Volusia	Circuit	Reversed
Ulysses Peterman .....	.....	Hillsborough	Criminal	Dismissed
Robert Carlton Pitman	Murder, 1st Degree	Seminole	Circuit	Affirmed
Leslie Quigg	Habeas Corpus	Dade	Circuit	Affirmed
Henry Ridley .....	.....	Volusia	Circuit	Dismissed
Harold Rivers et al.	Larceny	Hillsborough	Criminal	Dismissed
Harold Rivers and Lonnie Boatright	Larceny	Hillsborough	Criminal	Affirmed
Emory Seals	Murder, 2nd Degree	Escambia	Circuit	Affirmed
Joe Smith	Murder, 2nd Degree	Sarasota	Circuit	Dismissed
Henry Smith	Manslaughter	Escambia	Circuit	Reversed
Emillo Suarez et al.	Larceny, etc.	Hillsborough	Criminal	Reversed
Clarence Sullivan	Habeas Corpus	Hillsborough	Circuit	Petitioner Remanded

E. B. Sweeney	Breaking and Entering	Okaloosa	Circuit	Affirmed
Oriler Taylor	Arson	Dade	Criminal	Affirmed
Alfred Townsend	Murder, 1st Degree	Lafayette	Circuit	Reversed
Wm. A. Vannoy	Exhibiting Obscene Prints	Dade	Criminal	Reversed
Abe Washington	Murder, 1st Degree	Duval	Circuit	Affirmed
Alcus Ward	Shooting into Building	Walton	Circuit	Affirmed
L. E. Weinberg .....	.....	Dade	Criminal	Dismissed
Joseph Williams .....	.....	Volusia	Circuit	Dismissed
Leon M. Wolfe and Wallace A. Carter	Aiding and Abetting Robbery	Lake	Circuit	Reversed
Howard Zeigler	Grand Embezzlement	Dade	Criminal	Reversed

CASES DISPOSED OF DURING JUNE TERM, 1928

Pearl Adams et al.	Murder, 1st Degree	Brevard	Circuit	Affirmed as to Adams
A. M. Alfonso	Carnal Intercourse	Dade	Criminal	Affirmed
Geo. Alford and Ned Alford	Asault to Murder	Escambia	Ct. of Rec.	Dismissed
Geo. Alford and Ned Alford	Asault to Murder	Escambia	Ct. of Rec.	Dismissed
J. E. Ballard	Violation Liquor Law	Santa Rosa	Circuit	Reversed
E. A. Beaty .....	.....	St. Johns	Circuit	Dismissed
Anna Bellamy et al.	Murder, 2nd Degree	Seminole	Circuit	Reversed
Everett Bennett	Manslaughter	Bradford	Circuit	Affirmed
Johnnie Branch	Murder, 1st Degree	Orange	Circuit	Affirmed
Dorough Bush and Inez Thomas, etc.	Breaking and Entering	Madison	Circuit	Affirmed
Walter Carey .....	.....	Hillsborough	Criminal	Dismissed
William C. Cross	Grand Larceny	Hillsborough	Criminal	Dismissed
Theodore Davis	Larceny	Walton	Circuit	Affirmed
George Doby	Violation Liquor Law	Alachua	Circuit	Dismissed
Martha Douglass	Manslaughter	Dade	Criminal	Affirmed
Archie Driggers and Otis Simons	Larceny	Lee	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM, 1928—(Continued)

Name of Offender	Offense	County	Court	Disposition
Arthur Dunn	Embezzlement	Manatee	Circuit	Affirmed
Frank Edge	Burglary	Walton	Circuit	Affirmed
Wes Ellerby et al. ....	.....	Hillsborough	Criminal	Dismissed
Herman Felke	Highway Robbery	Dade	Criminal	Dismissed
Marion Fogler	Manslaughter	Duval	Circuit	Affirmed
Isaac French	Murder, 2nd Degree	Holmes	Circuit	Dismissed
Isaac French	Murder, 2nd Degree	Holmes	Circuit	Affirmed
Zollie Gibson	Murder, 2nd Degree	Orange	Circuit	Affirmed
Eller Gilley	Murder, 1st Degree	Jackson	Criminal	Dismissed
Basil Griggs	False Swearing	Orange	Circuit	Affirmed
J. L. Gunnells	Obtaining Money by False Pretenses	Okaloosa	Circuit	Reversed
Claude Hall	Violation Fish Law	Okaloosa	Circuit	Reversed
Eddie Harrington	Murder, 1st Degree	Duval	Circuit	Dismissed
James Harris	Robbery	Hillsborough	Criminal	Affirmed
Herbert Harvey	Murder, 1st Degree	Baker	Circuit	Dismissed
Fred Hutchins .....	.....	Lake	Circuit	Dismissed
Thomas James	Murder, 1st Degree	St. Johns	Circuit	Affirmed
James Jernigan	Larceny	Santa Rosa	Circuit	Affirmed
Lewis Jernigan	Larceny	Santa Rosa	Circuit	Affirmed
Francis Jiminez .....	.....	Hillsborough	Criminal	Dismissed
Lewis Kelly	Murder, 1st Degree	Jackson	Circuit	Reversed
Roy Kilcrease	Receiving Stolen Property	Okaloosa	Circuit	Reversed
Roosevelt Kirkland	Murder, 1st Degree	Baker	Circuit	Dismissed
Mary Lee	Manslaughter	Calhoun	Circuit	Reversed

Ralph Long	Murder, 1st Degree	Duval	Circuit	Dismissed
B. A. Lopez	Receiving Money by False Pretense	Palm Beach	Criminal	Reversed
Arno A. Luttrell	Robbery	Palm Beach	Criminal	Affirmed
Bennie Manascalcio .....	.....	Hillsborough	Criminal	Dismissed
John Mears	Murder, 1st Degree	Calhoun	Circuit	Affirmed
Neil McArthur	Violation Liquor Law	Santa Rosa	Circuit	Reversed
R. B. McFeeters	Manslaughter	Dade	Criminal	Reversed
M. McGee	Violation Liquor Law	Walton	Circuit	Affirmed
Ray McQuagge	Manslaughter	Bay	Circuit	Affirmed
U. S. Norris	Embezzlement	Escambia	Ct. of Rec.	Dismissed
U. S. Norris	Embezzlement	Escambia	Ct. of Rec.	Dismissed
Eugene Oglesby	Violation Fish Law	Seminole	Circuit	Affirmed
Fred Osius	Manslaughter	Dade	Criminal	Reversed
Louise Palmer .....	.....	Dade	Criminal	Dismissed
Eduardo Quersada .....	.....	Hillsborough	Criminal	Dismissed
Dallis Reddick	Carnal Intercourse	Walton	Circuit	Affirmed
Paul Rodriguez .....	.....	Hillsborough	Criminal	Dismissed
Geo. and J. J. Roe	Arson	Hillsborough	Criminal	Reversed
Paul Ryan	Murder	Highlands	Circuit	Affirmed
Frank Santana	Larceny	Hillsborough	Criminal	Affirmed
Tom Sasser	Manslaughter	Okaloosa	Circuit	Dismissed
David Sellars	False Swearing	Orange	Criminal	Affirmed
Archer Shepard	Bastardy	Monroe	Circuit	Affirmed
E. R. Skiff .....	.....	Hillsborough	Criminal	Dismissed
Edward G. Smith	Arson	Hillsborough	Criminal	Affirmed
Jabon Smith	Violation Liquor Law	Santa Rosa	Circuit	Reversed
Roy Smith	Breaking and Entering	Dade	Criminal	Reversed
John Stevens .....	.....	Hillsborough	Criminal	Dismissed
E. E. Tart	Manslaughter	Escambia	Ct. of Rec.	Dismissed

CASES DISPOSED OF DURING JUNE TERM, 1928—(Continued)

Name of Offender	Offense	County	Court	Disposition
Gill Thomas	Murder, 2nd Degree	Osceola	Circuit	Affirmed
William C. Turner .....	.....	Hillsborough	Criminal	Dismissed
A. E. Twiss	Incest	Polk	Criminal	Affirmed
James Wadley and Addaway Wadley .....	.....	Palm Beach	Criminal	Dismissed
Eugene Ward	Carnal Knowledge, etc.	Holmes	Circuit	Affirmed
Abe Washington	Certiorari .....	.....	U. S. Sup.	Pet. Denied
James W. Wells	Habeas Corpus	Hillsborough	Circuit	Affirmed
Dozler Wilder	Forgery	Hillsborough	Criminal	Affirmed

X.**List of Cases Handled by State Attorneys and County Prosecuting Attorneys.****REPORT OF STATE ATTORNEY FIRST JUDICIAL CIRCUIT OF FLORIDA***Dear Sir:*

During the year 1927 the grand jury in this circuit investigated 348 cases, and during the year 1928, 271, and returned indictments as follows:

	1927	1928
Murder	16	9
Manslaughter	4	2
Rape	5	5
Robbery	1	0
Grand larceny	30	19
Arson	1	1
Perjury	6	3
False pretenses	5	3
Burglary (breaking and entering)	13	15
Second offense liquor	15	7
Desertion and non-support wife, children.....	20	16
Adultery	3	4
Assaults—to murder, rape, etc., felonies.....	13	16
Receiving stolen property	0	2
Incest	0	1
Kidnapping	1	1
Keeping gambling house.....	1	0
Embezzlement	3	2
Forgery	5	5
Banking law violations—overloans	2	0
Counterfeiting	0	2
Abortion	3	0
Misdemeanors	78	75
	<hr/> 225	<hr/> 188

Yours very truly,

L. L. BABISINSKI,

State Attorney, First Judicial Circuit.

REPORT OF STATE ATTORNEY SECOND JUDICIAL CIRCUIT OF FLORIDA

February 23, 1929.

FRANKLIN COUNTY

During the year 1927 the grand jury in this county investigated 15 cases, and during the year 1928 investigated 12 cases, and returned indictments, as follows:

Murder	2
Other felonies	16
Misdemeanors	9
Total	<hr/> 27

GADSDEN COUNTY

During the year 1927 the grand jury in this county investigated 43 cases, and during the year 1928 investigated 65 cases, and returned indictments as follows:

	1927	1928
Murder	4	7
Robbery .....	.....	3
Desertion	6	2
Unlawfully receiving stolen property	1	.....
Breaking and entering; felony	5	.....
Grand larceny	1	.....
Assault to murder	1	9
Assault to have carnal intercourse with female under 18.....	2	1
Larceny of automobile	2	2
Assault to rape .....	.....	1
Manslaughter .....	.....	1
Adultery .....	.....	2
Forgery	2	2
Resisting an officer, etc. ....	.....	2
Entering building to commit misdemeanor.....	7	13
Possessing and selling intoxicating liquors, 2nd offense.....	1	1
Total	32	46

JEFFERSON COUNTY

During the year 1927 the grand jury in this county investigated 37 cases, and during the year 1928 investigated 28 cases, and returned indictments as follows:

	1927	1928
Murder	3	5
Assault with intent to murder	5	2
Assault with intent to rape	2	1
Grand larceny	1	0
Manslaughter	0	1
Breaking and entering building with intent to commit a felony	1	2
Unlawfully entering a building with intent to commit a misdemeanor	9	1
Robbery of the person.....	0	1
Obtaining goods or property under false pretense.....	2	2
Larceny of automobile	0	3
Gross cheat and fraud	1	0
Unlawfully receiving stolen property	0	1
Embezzlement	0	2
Unlawfully burning a building.....	0	1
Total	24	22

LIBERTY COUNTY

During the year 1927 the grand jury in this county investigated 13 cases, in 5 of which no true bills were found; in the remaining 8 cases true bills were found, one of which was for murder.

During the year 1928 the grand jury investigated 11 cases, in 5 of which

no true bills were found; in the remaining 6 cases true bills were found, none of which, however, were for murder.

LEON COUNTY

During the year 1927 the grand jury in this county investigated 103 cases, and during the year 1928 investigated 83 cases, and returned indictments as follows:

	1927	1928
Murder	3	3
Assault with intent to murder.....	6	8
Manslaughter	2	1
Assault with intent to rape.....	1	....
Grand larceny	2	....
Forgery	5	7
Larceny of automobile	7	9
Larceny of cattle	3	3
Receiving stolen property.....	1	1
Obtaining property under false pretenses.....	7	2
Unlawfully entering building (misdemeanor).....	35	23
Unlawful possession of mullet	6	....
Unlawful desertion of minor child.....	2	1
Total	80	58

WAKULLA COUNTY

No report received.

The total number of criminal cases handled by me before the grand jury during the two-year period covered by this report was 410.

Yours very truly,

GEO. W. WALKER,

State Attorney for the Second Judicial Circuit of Florida.

REPORT OF STATE ATTORNEY KELLY FOR THIRD JUDICIAL CIRCUIT OF FLORIDA FOR 1927-28

About twenty (20) bond validations were handled in this circuit.

If more convictions appear than indictments, reason for this is that some cases were already on docket.

DIXIE COUNTY

SPRING TERM, 1927.

Grand Jury returned 18 indictments; do not know number of cases investigated.

Adultery, 2; 1 sentence withheld, 1 convicted.

Assault with intent to murder, 2; 1 at large; 1 acquitted.

Grand larceny, 4; 2 convictions.

Larceny of auto, 1; convicted.

Murder, 6; 1 acquitted, 1 convicted 2nd deg., 1 convicted manslaughter.

Petit larceny, 3; all transferred to County Judge's Court.

Lewd and lascivious cohabitation, 1; nolle prossed.

Aggravated assault, 2; 1 convicted, other acquitted.

Malpractice in office, 1; acquitted.

Perjury, 2; 1 convicted, 1 at large.

FALL TERM, 1927.

Eighty-two cases investigated by grand jury; 27 indictments brought.
Murder, 1; convicted manslaughter.
Forgery and uttering, 2; convicted.
Adultery 2.
Robbery, 1.
Breaking and entering, 1; nolle prossed.
Selling mortgaged property, 1; acquitted.
Grand larceny, 1.
Assault to murder, 4; 2 acquitted, 1 convicted aggravated assault.
Running house of ill-fame, 1; nolle prossed.
Assault with intent to commit felony, 1; convicted.
Malpractice in office, 1; acquitted.
Rape, 2; acquitted.
Larceny of auto, 1; convicted.
Driving auto while intoxicated, 1; transferred County Judge's Court.
Larceny hogs, 3; transferred to County Judge's Court.
Lewd and lascivious cohabitation, 1.
Larceny two hogs, 1; transferred to County Judge's Court.
Fraudulently marking hogs, 10; nolle prossed.
Aggravated assault, 2; both convicted, 6 months county jail.

SPRING TERM, 1928.

Twenty-seven true bills returned; 48 cases handled by grand jury.
Enticing female for purposes of prostitution, 1; convicted and sentenced.
Murder, 1; mistrial.
Lewd and lascivious cohabitation, 4; convicted and sentence withheld; two married and cases dismissed.
Deserting wife and children, 1; assessed \$10 month.
Larceny of cow, 1; convicted, 2 years State Prison.
Assault to murder, 2; 1 convicted; 1 nolle prossed.
Grand larceny, 2; 1 sent reform school; 1 not tried yet.
Assault to commit felony, 1; same man convicted lewd and lascivious cohabitation above; nothing done, as he is serving one sentence.
Cutting fence of another, 1; on docket.
Perjury, 2; 1 convicted; 1 at large.
Selling mortgaged property, 1; acquitted.
Forgery and uttering, 1; nolle prossed.
False pretenses, 1; tried later.
Running gambling house, 1; convicted.
Keeping house ill-fame, 1; tried later.
Trespass, 1; on docket.
Selling intoxicating liquors, 5; transferred County Judge's Court.
Adultery, 2; both married; cases dismissed.

FALL TERM, 1928.

Nine true bills returned; 18 cases handled by grand jury.
Aggravated assault, 3; 1 acquitted; 2 court disqualified.
Larceny truck, 1; still on docket.
Murder, 1; convicted second degree, 20 years.

Breaking and entering, 2; both convicted, 1 six months, 1 sent reform school.

Assault to murder, 1; convicted, six months county jail or \$150 fine and costs.

Trespass, 1 (from spring term); nolle prossed.

LAFAYETTE COUNTY

NOTE: Alfred Townsend convicted murder first degree and reversed and sent back. Tried again at Fall Term, 1928.

SPECIAL TERM, JANUARY 3, 1927.

Fourteen indictments found by grand jury, all for violation of prohibition laws; transferred to County Judge's Court.

SPRING TERM, 1927.

No true bills returned by grand jury; 15 cases handled.

Murder, 1; mistrial.

Rape, 1; mistrial.

FALL TERM, 1927.

Grand jury returned no true bills; investigated 18 cases.

SPRING TERM, 1928.

Eleven indictments returned by grand jury; 15 cases handled.

Assault to murder, 4; postponed to Fall Term.

Murder, 3; on docket.

Larceny of cow, 3; on docket.

(Two cases against each one). Violation of prohibition law, 4; transferred County Judge's Court.

SPECIAL TERM, JULY 16, 1928.

No criminal cases tried because of an illegal jury box. Civil cases tried.

FALL TERM, 1928.

Thirty-two cases handled by grand jury; 18 indictments found.

Murder, 4; 2 convicted, second degree; 2 acquitted.

Violation prohibition laws, 11; transferred County Judge's Court.

Manslaughter, 1; acquitted.

Petit larceny, 1; transferred County Judge's Court.

Assault and battery, 1; transferred County Judge's Court.

Reckless use firearms, 1; transferred County Judge's Court.

Assault to murder, 1; convicted aggravated assault.

CIRCUIT COURT, COLUMBIA COUNTY

SPRING TERM, 1927.

On docket at beginning of term, 82; indictments returned during term, 39; number of cases investigated by grand jury, 70.

Murder, 4; 3 convicted, 1 nolle prossed.

Breaking an entering, 7; 7 convicted.

Assault to commit murder, 5; 2 convicted, 2 acquitted, 1 nolle prossed.

Forgery, 2; 2 convicted.

Larceny of automobile, 5; 4 convicted, 1 acquitted.

Bigamy, 2; 1 convicted, 1 acquitted.

Lewd cohabitation, 1; 1 acquitted.

Rape, statutory, 2; 1 convicted, 1 acquitted.

Withholding support from wife and children, 4; 2 convicted, 2 acquitted.

Grand larceny, 2; 2 convicted.

Manslaughter, 1; 1 convicted.

Shooting into motor vehicle, 1; 1 acquitted.

Disposing of mortgaged property; larceny, grand, 1; 1 acquitted.

FALL TERM, 1927.

Indictments returned, 27; number of cases investigated by grand jury, 45.

Murder, 2; 1 acquittal, and mistrial.

Assault to commit murder, 6; 4 convicted, 1 acquitted, 1 nolle prossed.

False pretense, 3; 1 convicted, 2 acquitted.

Grand larceny, 4; 3 convicted, 1 acquitted.

Larceny of automobile, 4; 3 convicted, 1 acquitted.

House of ill-fame, 2; 2 acquitted.

Breaking and entering, 10; 6 convicted, 4 acquitted.

Rape, 1; 1 acquitted.

Bigamy, 1; 1 acquitted.

Withholding support from wife and children, 4; 2 convicted, 2 acquitted.

Mayhem, 1; 1 convicted.

Forgery, 3; 3 convicted.

Larceny of cow, 4; 1 convicted, 3 nolle prossed.

Embezzlement, 3; 1 convicted, 2 acquitted.

This does not show bond validation, commitment hearings, habeas corpus and inquests. All misdemeanors, where he has jurisdiction, are transferred to County Judge's Court.

My records do not show all cases that are nolle prossed, and does not show any appeal cases which are handled by State Attorney and are numerous.

SPRING TERM, 1928.

Indictments returned during term, 28; investigated by grand jury, 42.

Murder, 3; 1 convicted, 1 acquitted, 1 nolle prossed.

Assault to commit murder, 3; 1 convicted, 2 continued.

Breaking and entering, 10; 9 convicted, 1 acquitted.

Larceny of automobile, 4; 4 convicted.

Forgery, 3; 1 convicted, 2 continued.

Deserting wife and children, 5; 3 convicted, 2 acquitted.

FALL TERM, 1928.

Indictments returned during term, 16; investigated by grand jury, no record.

Murder, 1; 1 convicted.

Manslaughter, 1; 1 acquitted.

Assault to commit murder, 2; 1 convicted, 1 acquitted.

Breaking and entering, 6; 4 convicted, 2 acquitted.

Embezzlement, 1; 1 convicted.

Larceny of automobile, 1; 1 convicted.

Robbery, 3; 2 convicted, 1 acquitted.

False pretenses, 1; 1 convicted.

Forgery, 1; 1 convicted.

Desertion of wife and children, 2; 2 convicted.

Disposition of cases on docket at beginning of 1927:

Murder, 1 convicted.

Manslaughter, 1 convicted.

Assault and attempt to murder, 2 convicted.

Rape, 1 acquitted.

Breaking and entering, 6 convicted.

Larceny of automobile, 2 convicted.

Desertion of children, 1 convicted.

Aggravated assault, 1 convicted.

CIRCUIT COURT, HAMILTON COUNTY

We do not have the cases in Hamilton county by term. One hundred twenty (120) persons were indicted and ninety-three (93) indictments returned by the grand jury between January 1, 1927, and December 31, 1928. Also twenty (20) cases transferred from Madison county to Hamilton county. Cases disposed of during that period:

Murder, 8; 4 convictions, 4 acquittals.

Assault to commit murder, 8; 4 convictions, 4 acquittals.

Manslaughter, 1; 1 conviction.

Grand larceny, 9; 6 convictions, 3 acquittals.

Forgery and uttering forgery, 4; 2 convictions, 2 acquittals.

Larceny of steer, 2; 2 convictions.

Trespass, 3; 3 acquittals.

Withholding support from wife and children, 7; 2 convictions, 5 acquittals.

Enticing girl, immoral purpose, 1; 1 acquittal.

Keeping house of ill-fame, 1; 1 acquittal.

Assault to commit felony, 8; 6 convictions, 2 acquittals.

Violating banking law, 3; 3 acquittals.

Rape, 1; 1 conviction.

Bigamy, 3; 3 convictions.

Lewd and lascivious cohabitation, 4; 4 acquittals.

Arson, 2; 2 acquittals.

Attempt to commit arson, 1; 1 acquittal.

Embezzlement, 1; 1 conviction.

Breaking and entering, 3; 3 convictions.

Seventeen (17) of the cases transferred from Madison county have been nolle prossed and ten (10) other cases nolle prossed. This report is taken from the transcript of the Bench Docket and notes on same.

CIRCUIT COURT, MADISON COUNTY

SPRING TERM, 1928.

Number of cases investigated by grand jury, 36; number of indictments returned, 27.

Murder, 4; 2 convicted, 2 acquitted.

Manslaughter, 2; 2 convicted.

Rape, statutory, 3; 2 convicted, 1 acquitted.

Grand larceny, 5; 3 convicted, 2 acquitted.

Breaking and entering, 8; 8 convicted.

Larceny of automobile, 3; 2 convicted, 1 acquitted.

Assault to commit murder, 2; 1 convicted, 1 acquitted.

Disposing of property subject to lien, 3; 3 convictions.

FALL TERM, 1928.

Number of cases investigated by grand jury, 50; number of indictments returned, 36.

Murder, : 1 convicted; 1 mistrial.
Manslaughter, 3; 2 convicted, 1 acquitted.
Assault to commit murder, 6; 6 convicted.
Deserting wife and children, 8; 6 convicted, 2 acquitted.
Breaking and entering, 9; 3 convicted, 6 acquitted.
Larceny of mule, 1; 1 convicted.
Larceny of automobile, 2; 2 convicted.
Assault to commit felony, 5; 2 convicted, 3 acquitted.

The above and foregoing report for 1927 and 1928 does not show all cases nolle prossed. Does not show validation of bond, commitment hearing, inquests and habeas corpus.

Indictments for misdemeanors, which in the aggregate are many, are transferred to County Judge's Court, when he has jurisdiction. All others in this circuit are tried in Circuit Court. This report does not show appeal cases.

SPECIAL TERM, JANUARY, 1927.

There were not any cases tried at this term, but the cases for violating the banking laws of Florida were transferred to Hamilton County, Florida, twenty (20) in number.

SPRING TERM, 1927.

On docket at beginning of term, 18; number of cases investigated by grand jury, 35; number of indictments returned, 22.

Shooting into motor truck, 4; 2 convicted, 2 acquitted.
Throwing missile into house, 1; 1 convicted.
Breaking and entering, 8; 8 convicted.
Larceny of automobile, 3; 3 convicted.
Robbery, 5; 5 convicted.
Murder, 3; 3 convicted.
Deserting wife and children, 2; 2 convicted.

FALL TERM, 1927.

Number of cases investigated by grand jury, 29; number of indictments returned, 18.

Murder, 2; 2 convicted.
Assault to commit murder, 5; 2 convicted, 3 acquitted.
Larceny of automobile, 2; 2 convicted.
Malicious killing of animal, 1; 1 convicted.
Statutory rape, 2; 2 convicted.
Breaking and entering, 8; 6 convicted, 2 acquitted.
Deserting wife and children, 4; 2 convicted, 2 acquitted.

SPRING TERM, 1928.

Number of cases investigated by grand jury, 42; number of indictments returned, 22.

Assault to commit murder, 2; 1 acquitted, 1 nolle prossed.
Breaking and entering, 8; 7 convicted, 1 acquitted.
Grand larceny, 3; 1 convicted, 2 acquitted.
Selling intoxicants, second offense, 1; 1 convicted.

FALL TERM, 1928.

Do not know how many cases were investigated; number of indictments returned, 22.

Assault to commit murder, 3; 1 convicted, 2 acquitted.

Larceny of cows, 2; 1 convicted, 1 acquitted.

Forgery, 1; 1 convicted.

Culpable negligence, 1; 1 acquitted.

Shooting into house, 1; 1 convicted.

Breaking and entering, 3; 2 convicted, 1 acquitted.

Embezzlement, 3; 3 acquitted.

We have not investigated to ascertain the number of cases nolle prossed. Each grand jury returns true bills for selling intoxicating liquors and other misdemeanors that are transferred to the County Judge's Court. For the non-support of wife and children, defendant many times agree to a stipulated amount for their support, and the cases remained on the docket. Also a number of bond validations, commitment hearings, inquests and habeas corpus proceedings are not shown. The following cases are found on my record that were on the docket at the beginning of the Regular Term in the Spring of 1927:

Murder, 2; 2 convicted.

Aggravated assault, 1; 1 convicted.

Grand larceny, 2; 2 convicted.

Breaking and entering, 4; 4 convicted.

Withholding means from wife and children, 2; 2 nolle prossed.

There are many cases appealed from County Judge's Court, Justice of the Peace Courts and City Courts in this county, which are handled by State Attorney. All cases appealed to the Supreme Court, bills of exception are settled by State Attorney.

CIRCUIT COURT, SUWANNEE COUNTY

SPECIAL TERM, BEGINNING FEB. 15, 1927.

On docket at beginning of term, 27; number of cases investigated by grand jury, 6; number of indictments returned, 4.

Assault with intent to commit rape, 1; 1 convicted.

Breaking and entering, 1; 1 convicted.

Assault to commit murder, 1; 1 convicted.

Murder, 1; 1 convicted.

SPRING TERM, 1927.

On docket at beginning of term, 29; number of cases investigated by grand jury, 50; number of indictments returned, 29.

Murder, 5; 2 convicted, 3 acquitted.

Forgery, 3; 3 convicted.

Assault to commit murder, 3; 2 convicted, 1 acquitted.

Grand larceny, 4; 4 convicted.

Larceny of automobile, 1; 1 convicted.

Breaking and entering, 11; 10 convicted, 1 acquitted.

Aggravated assault, 2; 2 convicted.

Disposing of property subject to lien, 5; 2 convicted, 3 acquitted.

For non-support of wife and children, 4; 3 convicted, 1 acquitted.

FALL TERM, 1927.

Number of cases investigated by grand jury, 50; number of indictments returned, 41.

Murder, 3; 2 convicted, 1 acquitted.

Manslaughter, 2; 1 convicted, 1 acquitted.

Assault to commit murder, 5; 4 convicted, 1 acquitted.
Breaking and entering, 8; 6 convicted, 2 acquitted.
Bank robbery, 2; 2 convicted.
Forgery, 1; 1 convicted.
Grand larceny, 4; 3 convicted, 1 acquitted.
Larceny of cows, 7; 2 convicted, 5 acquitted.
Larceny of automobile, 4; 2 convicted, 2 acquitted.
Disposing of property subject to lien, 1; 1 conviction.
For non-support of wife, 1; 1 acquitted.

CIRCUIT COURT, TAYLOR COUNTY, FLORIDA

REGULAR SPRING TERM, 1928.

Number of cases investigated by grand jury, 32; number of bills returned, 18.

Murder, 4; 3 convicted, 1 acquitted.
Robbery, 1; 1 acquitted.
Assault to commit murder, 3; 2 convicted, 1 acquitted.
Grand larceny, 2; 2 convicted.
Bigamy, 2; 2 convicted.
Breaking and entering, 2; 1 convicted, 1 acquitted.
Larceny of automobile, 1; 1 convicted.

SPECIAL TERM, JUNE 25, 1928.

Have lost record of cases tried at special term above stated.

REGULAR FALL TERM, 1928.

Number of cases investigated by grand jury, 42; number of true bills, returned, 19.

At the end of the first week of this Fall Term all of indictments found by the grand jury were quashed because of an illegal jury box. The grand jury reconvened the following Monday and returned 12 indictments. And court adjourned.

SPECIAL TERM, NOVEMBER 5, 1928.

No grand jury. The following cases were disposed of:

Murder, 1; 1 acquittal.
Robbery, 1; 1 convicted.
Forgery, 1; 1 convicted.
Desertion of wife and children, 1; 1 convicted.
Breaking and entering, 1; 1 convicted.

Several cases were transferred to the County Judge's Court. We do not have the number of cases nolle prossed. Because of the number of murder cases in this county there are many cases on the docket not disposed of and we will have to hold special terms to clear docket.

CIRCUIT COURT, TAYLOR COUNTY

SPECIAL TERM, JANUARY, 1927.

On the docket at beginning of term, 22; number of cases investigated by grand jury, 15; number of true bills returned, 5; cases disposed of as follows:

Murder, 4; 4 convicted.

SPECIAL TERM, MARCH 14, 1927.

No grand jury. The following cases disposed of:
Murder, 1; 1 convicted.

Rape, statutory, 1; 1 convicted.
 Robbery, 1; 1 convicted.
 Trespass, 3; 1 convicted, 2 acquitted.

REGULAR SPRING TERM, 1927.

Number of cases investigated by grand jury, 34; number of indictments returned, 22.

Murder, 3; 2 convicted, 1 acquitted.
 Rape, statutory, 4; 2 convicted, 2 acquitted.
 Violating fish law, 9; 9 convicted.

SPECIAL TERM, JUNE, 1927.

No grand jury.
 Murder, 1; 1 convicted.
 Grand larceny, 1; 1 acquitted.
 Trespass, 2; 2 acquitted.

FALL TERM, 1927.

Number of cases investigated by grand jury, 24; number of indictments returned, 17. Cases disposed of as follows:

Murder, 2; 2 convicted.
 Grand larceny, 1; 1 acquitted.
 Breaking and entering, 2; 1 convicted, 1 acquitted.
 Larceny of cow, 2; 1 convicted, 1 acquitted.
 Fraudulently marking an animal, 2; 2 acquitted.
 Lewd and lascivious cohabitation, 2; 1 convicted, 1 acquitted.

Five (5) cases for non-support of wife and children before or after conviction were assessed by the Court an agreed amount for their support. A number of cases were certified to the County Judge's Court. We do not have the number of cases nolle prossed. We do not have the bond validations, commitment hearing, inquests and habeas corpus.

REPORT OF CHARLES M. DURRANCE, STATE ATTORNEY FOURTH JUDICIAL CIRCUIT OF FLORIDA

Crime—Felonies.	No. of Cases.
Murder, first degree	58
Murder, second degree	19
Rape	3
Assault with intent to rape.....	2
Robbery	1
No bills	9
Total number of cases	92
Crime—Misdemeanors.	No. of Cases.
Assault and battery	1
Crime—Felonies.	No. of Cases.
Murder and assault with intent to commit murder.....	8
Stealing cattle	1
Bigamy	1
Embezzlement	1
Shooting into a dwelling.....	1
Shooting into a railroad car.....	1

Breaking jail	1
Breaking and entering and grand larceny.....	21
Forgery	8

Total number of cases	43
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Crime—Misdemeanors.	No. of Cases.
Indecent exposure of person	1
Gambling	79

Total number of cases	80
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Crime—Felonies.	No. of Cases.
Murder	5
Breaking and entering	12
Grand larceny	2
Assault with intent to commit murder.....	3
Manslaughter	1
Forgery	2
Desertion of minor children.....	1
Receiving stolen goods	1
Embezzlement	1
Conspiring to commit an offense.....	1
Altering the mark of an animal.....	1
Stealing a heifer	2
Shooting into a vehicle	1
Enticing a female to leave home for immoral purposes.....	1

Total number of cases.....	38
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Crime—Misdemeanors.	No. of Cases.
Taking shrimp from inside waters.....	4
White man and negro woman living together in the night time.....	1
Aggravated assault	2
Selling liquor	1
Exposure of sexual organs	1
Unlawful possession of intoxicating liquor.....	1
Doing a fish business without a license.....	1
Discharging firearms on a public highway.....	1

Total number of cases.....	12
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In addition to the above, the following cases were investigated by grand juries and no true bills found: Murder, 2; possessing intoxicating liquor, 1; receiving stolen goods, 1; accessory after the fact, 1; breaking and entering, 1.

REPORT OF STATE ATTORNEY FOR FIFTH JUDICIAL CIRCUIT OF FLORIDA FOR 1927-28

Hon. Fred Davis, Attorney General:

Cases handled in Fifth Judicial Circuit during years 1927 and 1928
(Marion county only) as follows:

Murder, 25.

Rape, 1.

Misdemeanors, 30.

Robberies, 4.

Other felonies, 175.

C. A. SAVAGE, JR.,

State Attorney, Fifth Judicial Circuit of Florida.

REPORT OF STATE ATTORNEY SIXTH JUDICIAL CIRCUIT OF
FLORIDA

Clearwater, Fla., January 30th, 1929.

Hon. Fred H. Davis, Attorney General,
Tallahassee, Florida.

Dear Sir:—Complying with your request for report of State attorneys, I herewith beg to submit my report together with recommendations for changes in the law, as they appear to me. Beg to advise that my report may not be accurate, as I have not had time to carefully inspect the record of the grand juries.

There being a county court in both Pasco and Pinellas county the grand jury does not, as a usual thing, investigate misdemeanors, however, in some instances they indict in misdemeanors and certify same to County Court for trial.

At the spring term of the Circuit Court for Pasco county, which convened in April, 1928, the grand jury investigated about thirty-five cases, classed as follows: Breaking and entering, 10; second offense violation liquor law, 10; assault to kill, 5; grand larceny, 5; other offenses about 5. (The above is more or less guesswork.)

At the spring term in Pinellas county, May, 1928, there was investigated by the grand jury, upon commitment by the various magistrates of the county, 75 cases, classed as follows: Grand larceny, 10; false pretense, 5; breaking and entering, 16; attempt to murder, 6; robbery, 3; larceny of auto, 8; assault to robbery, 1; desertion, 6; embezzlement, 3; forgery, 8; murder, 1; rape, 1; carnal intercourse under 18 years, 1; second offender liquor law, 1; enticing for prostitution, 1; receiving stolen property, 1; bigamy, 1. There were about 20 charges of various kinds investigated other than those committed.

At the fall term in Pasco county, October, 1928, about the same number of cases investigated and about the same classification.

The fall term in Pinellas county, December, 1928, investigated upon commitment 52 cases, as follows: Grand larceny, 8; false pretense, 4; breaking and entering, 12; attempt to kill, 4; larceny of auto, 5; attempt to rob, 1; desertion, 4; embezzlement, 4; manslaughter, 1; forgery, 2; bigamy, 1; receiving stolen property, 2; election fraud, 1; larceny of cow, 2; arson, 1. About 6 indictments returned in misdemeanors and about 10 or 15 other charges investigated, which were not upon commitment.

Beg to say that as I had not been required to keep this record heretofore I have not kept it accurately, but will be glad to do so henceforth. Hope this will serve your purpose for the present.

RECOMMENDATION FOR CHANGES IN THE PRESENT LAW.

I would suggest that the law be changed so as to allow the State attorney in counties where no criminal court, to file information in all felonies, not capital. This would, I believe, take a constitutional amendment.

I would also suggest that the law relative to securing juries be amended so as to allow the court to order sufficient number to fill regular panel, also extra panels from the body of the county, in discretion of court.

I would like to see law amended allowing the State the right of appeal not only in matters of law, but also from verdicts of juries.

Another matter. I would like to see some regulation requiring the pardoning board to notify the State attorney of all applications for pardons arising from his circuit and giving him an opportunity to present the State's side of the matter before the pardon is granted.

I think the State should have the closing argument in all criminal cases—all laws seem to be made in favor of the criminal (defendant).

I shall not prolong these suggestions, as I know you are a busy man, and I know that you are fully able to take care of the State's interest in these matters.

Thanking you for past favors, and assuring you that I shall be in position to render a more perfect and accurate report next time, I am,

Yours very truly,

E. P. WILSON.

LIST OF CASES HANDLED IN THE SEVENTH JUDICIAL CIRCUIT OF FLORIDA, VOLUSIA COUNTY, DURING THE YEAR 1928.

J. A. SCARLETT, State Attorney.

There were considered by the grand jury during 1928, 160 cases. There were true bills in 125 cases, and no true bills in 35 cases. Of the 125 true bills, 5 were for misdemeanors that were sent to the County Judge's Court.

Breaking and Entering—Plead guilty, 12; found guilty, 4; nolle prossed, 1; not tried, 4; acquitted, 1. Total, 22.

Assault with Intent to Commit Murder—Found guilty of aggravated assault, 2; plead guilty, 4; found guilty, 1; not yet tried, 3; continued, 1. Total, 11.

Aggravated Assault—Found guilty, 1; nolle prossed, 2; bond estreated, 1; plead guilty, 1. Total 5.

Murder in First Degree—Plead guilty to manslaughter, 1; plead guilty to murder in second degree, 2; found guilty of murder in second degree, 2; found not guilty, 1. Total 6.

Murder in Second Degree—Plead guilty, 1; found guilty, 1. Total 2.

Mayhem—Found guilty, 1; change of venue, 2. Total, 3.

False Imprisonment and Kidnapping—Change of venue 1. Total, 1.

Grand Larceny—Plead guilty, 5; found not guilty, 1; found guilty, 1; continued, 1; bond estreated, 1. Total, 9.

Embezzlement—Indictment quashed, 2; nolle prossed, 1; found guilty, 2; continued, 4. Total 9.

Robbery—Continued, 2; found guilty, 1. Total, 2.

Burglary—Plead guilty, 5. Total, 5.

Receiving Stolen Goods—Plead guilty, 4; not tried, 2. Total, 6.

Assault with Intent to Rob—Found guilty, 1; found not guilty, 1; bond estreated, 1. Total, 3.

Forgery—Found guilty, 1; nolle prossed, 2; plead guilty, 2; extradition pending, 1. Total, 6.

Uttering Forged Instrument—Plead guilty, 2; found guilty, 2. Total, 4.

Withholding Support—Found not guilty, 2; found guilty, 1; bond estreated, 1. Total, 4.

Desertion—Plead guilty, 2; settled in full, 2. Total, 4.

Malpractice in Office—Found not guilty, 1; not tried, 4. Total, 5.

Carnal Intercourse with Unmarried Female Under Age of 18 Years—Found not guilty, 1; plead guilty, 1. Total, 2.

Attempt Have Carnal Intercourse with Unmarried Female Under Age of 18 Years—Plead guilty, 1. Total, 1.

Bigamy—Found guilty, 1. Total, 1.

Trespass—Plead guilty, 1. Total, 1.

Libel—Found not guilty, 1; found guilty, 1. Total, 2.

Abstraction of Monies, Funds, etc., of Banking Corporation—Released on writ of habeas corpus, 1. Total, 1.

Obtaining Money Under False Pretense—Found guilty, 1; not tried, 1. Total, 2.

Conspiracy—Indictment quashed, 1. Total, 1.

Inducing and Enticing and Procuring Girl to Leave Home for Immoral Purposes—Nolle prossed, 1. Total, 1.

Assault with Intent to Commit Rape—Nolle prossed, 1. Total, 1.

Total, 120.

In addition, there are a number of cases pending against bank officials for misappliance of funds, credits, etc., and for embezzlement, which have gone through the year 1928 without trial, and which were ready for trial at the time that Judge Hutchinson became too ill to continue the trial of the cases.

The cases marked "not tried" were set for January and February, 1929.

REPORT OF STATE ATTORNEY FOR EIGHTH JUDICIAL CIRCUIT OF FLORIDA FOR 1927-28.

ALACHUA COUNTY.

Charge—	1927		
	Jan. Term	June Term	Nov. Term
Murder	3	3	4
Assaults to murder	6	14	9
Breaking and entering	7	12	11
Larceny of automobile	2	4	3
Other grand larceny	5	6	2
Other offenses	5	5	11
No true bills returned.....	2	7	14
Nolle prossed	5	5	16
Acquittals by jury	1	2	3
Charge—	1928		
	Jan. Term	June Term	Nov. Term
Murder	1	2	3
Assaults to murder	5	6	6
Breaking and entering	2	2	11
Larceny of automobile	1	4	3
Other grand larceny	1	2	5
Other offenses	5	3	5
No true bills returned.....	2	9	13
Nolle prossed	9	7	7
Acquittals by jury	0	1	0

GILCHRIST COUNTY.

Charge—	1927		1928	
	Spring Term	Fall Term	Spring Term	Fall Term
Murder	1	1	0
Assault, intent to commit murder....	...	1	0	1
Breaking and entering	0	0	1
Other larceny	0	0	1
Other offenses	1	0	0
No true bills returned	0	1	3
Nolle prosee entered by State Atty..	...	0	1	4
Acquittals by jury	0	0	1

LEVY COUNTY.

Charge—	1927		1928	
	Spring Term	Fall Term	Spring Term	Fall Term
Murder	2	3		
Assaults to murder	2	4		
Breaking and entering	2	1		
Larceny of automobile	0	1		
Other grand larceny	1	2		
Other offenses	2	4		
No true bills returned	7	5		
Nolle prossed	2	3		
Charge—	1928			
	Spring Term	Fall Term		
Murder	1	2		
Assaults to murder	3	4		
Breaking and entering	2	3		
Larceny of automobile	2	3		
Other grand larceny	1	6		
Other offenses	1	2		
No true bills returned	4	6		
Nolle prossed	3	2		

REPORT OF L. D. McRAE, CHIPLEY, STATE ATTORNEY IN AND FOR
THE NINTH JUDICIAL CIRCUIT OF FLORIDA

To Hon. Fred H. Davis, Attorney General of Florida, showing cases handled by State attorney during years 1927 and 1928.

Number murder cases, Holmes county, 6; Washington county, none.

Number rape cases Holmes county, 1; Washington county, none.

Number felonies, Holmes county, 73; Washington county, 61.

Number misdemeanors, Holmes county, 18; Washington county, 8.

Total, 167.

Number cases investigated by grand jury, Holmes county, 127; Washington county, 125. Total, 252.

I also handled during this period several bond validation suits.

L. D. McRAE,

State Attorney, Ninth Circuit, State of Florida.

REPORT OF C. A. ROSWELL, STATE ATTORNEY FOR TENTH JUDICIAL
CIRCUIT OF FLORIDA

Fall term of grand jury of 1926, recalled January 6, 1927.

Returned five true bills.

State vs. Eugene Smith; murder; tried February 12, 1927, found guilty of murder in first degree with recommendation to mercy; sentenced to life imprisonment.

State vs. Earl London, alias Anthony Carter, reindicted as alias Poker Bill; murder.

State vs. Bartow Foose; murder; tried October 20, 1927, directed verdict by court; not guilty.

State vs. Margaret March Sullivan, reindicted under name of Margaret March; murder.

State vs. Harry Brooks; murder; tried January 31, 1927; verdict, not guilty.

1926 fall term of grand jury recalled January 24, 1927.

Returned one true bill.

State vs. Earl London, alias Poker Bill; murder; tried February 2, 1927, found guilty of murder in first degree; sentenced to be electrocuted.

State vs. Henry Lewis, alias Anthony Carter; murder; plead guilty, murder in second degree; sentenced to life imprisonment.

Special term of grand jury of 1927.

Returned six true bills and one no bill.

State vs. Roscoe Costine; rape; tried October 18, 1927; verdict, not guilty.

State vs. Ethel Robinson; murder; plead guilty of manslaughter; sentenced to one year; sentence suspended on account of health and time she had been in jail.

State vs. Norman L. Green and Charles P. Acton, transcribed to Criminal Court of Record; obtaining money by false pretenses.

State vs. Lawrence Williams; murder; died while in custody.

State vs. R. D. Rogers; rape; not in custody.

State vs. Monroe Cook; no bill.

State vs. W. A. Flemming; murder; tried March 15, 1927; verdict, manslaughter; sentenced 10 years; later released by judge because indictment had not been filed in two years after the date of committing the crime.

Special term of grand jury, recalled April 5, 1927.

Returned one true bill.

State vs. Claude Austin; murder; plead guilty of second degree murder.

Fall term of grand jury of 1927.

Returned nine true bills and one no bill.

State vs. James Myers; murder; tried November 8, 1927; verdict, second degree murder; sentenced 25 years State prison.

State vs. Lawrence Myers; accessory murder; nolle prossed, insufficient evidence.

State vs. Joe Asbury; murder; plead guilty second degree murder; sentenced to life imprisonment.

State vs. George Jones; murder; plead guilty second degree murder; life imprisonment.

State vs. Roy Lay; murder; true bill with later count of irregularities and presented to the grand jury at special session.

State vs. Will Stevens; murder; tried November 8, 1927; verdict, manslaughter; sentenced 5 years.

State vs. Margaret March; murder; plead guilty of manslaughter; sentenced to 1 year; sentence suspended on good behavior.

State vs. Richard Bennett; murder; tried January 30, 1928; verdict, manslaughter; sentenced 10 years.

State vs. Clifford Stovall; murder; tried November 11, 1927; verdict, manslaughter; sentenced 3 years.

State vs. Roy O'Hara; no bill.

Fall term of grand jury, recalled October 21, 1927.

Rescinded the action because of irregularities in the case of State vs. Roy Lay and returned a no bill.

Special term of grand jury, 1928, returned one true bill and two no bills.

State vs. Washington Thomas, alias Wash Thomas; murder; tried April 23, 1928; verdict, manslaughter; sentenced 5 years.

State vs. Tony Thomas; no bill.

State vs. J. N. Tillman; no bill.

Fall term of grand jury of 1928.

Returned nine true bills and four no bills.

State vs. Gary Johnson; murder; tried October 22, 1928; verdict, not guilty.

State vs. Mary Gibbs and Hattie Pherson, accessory to murder; nolle prossed; insufficient evidence.

State vs. Joe Griffin; murder; tried October 23, 1928; verdict, first degree murder with mercy; sentenced to life imprisonment.

State vs. Sam Harry; no bill.

State vs. Robert Pridgeon; murder; tried October 24, 1928; verdict, murder in first degree with mercy; sentenced to life imprisonment.

State vs. Shorty Pridgeon, alias John Doe; murder; not in custody.

State vs. James McNeil; murder; plead guilty second degree murder; sentenced 20 years.

State vs. Joe Wigfall; no bill.

State vs. Isaac Cowell; no bill.

State vs. Harry Edwards; murder; not in custody.

State vs. Bill Williams, alias Ben Williams, alias J. D. Williams; murder; not in custody.

State vs. Henry Johnson; no bill.

State vs. H. C. Patterson; murder; tried October 25, 1928; directed verdict not guilty.

State vs. Charlie Cray; bastardy case; compromised on sanction of court.

State vs. Leo Jones; bastardy; tried October 24, 1928; verdict guilty.

REPORT OF VERNON HAWTHORNE, STATE ATTORNEY FOR ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, 1927-28

From the month of June, 1927, up to January 1, 1928, this office investigated and handled 191 cases, including 23 deaths from natural causes, 4 statutory offenses, 73 accidental deaths, 44 unlawful homicides, 18 lawful

homicides, 19 suicides, 3 rapes, 2 assaults to commit murder, 1 attempted suicide and 4 embezzlements.

During this period of time the grand jury returned 15 indictments. Of this number: 4 charged murder in first degree, 5 charged murder in second degree, 4 charged embezzlement, 2 charged statutory offense and 2 no true bills were returned.

Concerning the 44 unlawful homicides, immediate investigations of the crime conducted by this office revealed, in most cases, a homicide triable in the Criminal Court of Record and coming under the jurisdiction of the county solicitor, to whom, in such cases we have followed the practice of delivering all evidence and facts, including the names and addresses of all witnesses obtainable in the course of such investigation, including, in a great number of such cases, signed confessions of the criminal. This practice has brought about happy results in eliminating the expense of a grand jury investigation and insuring a speedy trial in the court where the defendant would finally be put on trial. This is essentially true in all cases where, upon investigation, it is found that the grade of the offense is less than capital.

Of the above indictments trial jurisdiction was assumed by the county solicitor in all except capital cases.

Convictions were obtained in all of the four first degree murder cases.

Two disbarment petitions against Miami attorneys were filed resulting in the disbarment of one defendant and a finding for the defendant in the other.

During the year 1928 this office investigated and handled 201 cases, including 33 deaths from natural causes, 80 accidental deaths, 43 unlawful homicides, 4 rapes, 15 lawful homicides, 16 suicides, 1 statutory offense, 1 attempted suicide and 8 assaults with intent to commit murder or rape.

During the year the grand jury returned 30 indictments. Of this number 13 charged murder in first degree, 7 charged murder in second degree, 1 charged non-support, 1 charged arson, 2 charged assault and battery, 1 charged conspiracy to obstruct justice, 1 charged statutory offense, 3 charged rape, 1 charged robbery and 2 no true bills were returned.

Of the 13 indictments for murder in first degree, convictions have been obtained in nine cases, there has been three acquittals and one case has not yet been tried. Two criminal assault cases are now pending, and one has been nolle prossed because the prosecuting witnesses have moved out of the State.

Four disbarment petitions against Miami attorneys have been filed. Three of these have already been tried and the other one will be tried at an early date. In these cases the offenders are charged with dishonest practices and conduct unfitting them for association with the fair and honorable members of the bar.

This office has resisted three bond validations during the year. The proposed issue of \$3,000,000 to bulkhead private property along the ocean front of Miami Beach by county and city taxation was defeated, representing a total saving of \$6,600,000 to the taxpayers. A proposed bond issue of \$46,000 for the town of Ojus was defeated. These bonds were later validated without objection after a compliance with the law by the town authorities.

We are now contesting the East Coast Canal bond issue in the Supreme

Court of the State, wherein \$1,887,000 bonds are sought to be validated on the part of the Florida Inland Navigation District Commission.

REPORT OF GUY M. STRAYHORN, STATE ATTORNEY TWELFTH JUDICIAL CIRCUIT, FORT MYERS, FLA.

February 7, 1929.

Hon. Fred H. Davis, Attorney General,
Tallahassee, Fla.

Dear Sir:—Pursuant to your request, I report herewith a summary of the criminal business handled in the twelfth judicial circuit during the years 1927 and 1928:

During the year 1927 the grand juries in this circuit investigated 136 cases, and during the year 1928, 146 cases, and returned indictments as follows:

Charge—	1927	1928
Murder	8	4
Burglary	15	17
Larceny	8	6
Rape	1	1
Misdemeanors	2	1
Miscellaneous felonies	66	84
Totals	100	113

I hope this is the information you desired, but if you want anything further, write me and I will try to get it up for you.

Yours truly,

GUY M. STRAYHORN.

REPORT OF CHARLES B. PARKHILL, ESQ., STATE ATTORNEY THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA, 1927-28

Tampa, Fla., January 31, 1929.

1927.

- Feb. 7 John Small vs. State; appeal; reversed.
- Feb. 10 Mrs. L. Davis vs. State; appeal; dismissed and affirmed.
- Feb. 16 Robert Green vs. State; murder; convicted.
- Feb. 23 Ex Parte William Clarke; habeas corpus.
- Feb. 24 Tony Bueno vs. State; appeal; affirmed.
- Feb. 25 Seth M. Smith vs. State; appeal; argued and submitted.
- Feb. 25 John Bergman vs. State; appeal; reversed.
- Feb. 25 F. Fernandez vs. State; appeal; argued and submitted.
- March 26 Jacob Gilbert vs. State; murder; convicted.
- April 18 State vs. Will Brown; murder; not arrested.
- April 25 Jacob Long and David Watson vs. State; murder; two mistrials and nolle prossed.
- May 11 State vs. Sanford Porter; murder; convicted.
- July 8 Ex Parte Clarence Sullivan; habeas corpus; discharged. The State appealed and judgment reversed.
- July 29 State vs. B. F. Levins; murder; convicted and electrocuted.

- July 29 State vs. B. F. Levins; murder; nolle prossed.
- July 27 Harvey Myers vs. State; appeal; dismissed.
- July 27 Harvey Myers vs. State; appeal; reversed.
- July 26 Grady Scroggins vs. State; appeal; affirmed.
- Aug. 29 V. Pullara vs. State; appeal; reversed.
- Sept. 6 State vs. Leonard Thompson; murder; not guilty.
- Sept. 17 State vs. Ethyl E. Duncan and Eleanor Wells; murder; Bessie Lee Duncan convicted; Eleanor Wells, nolle prossed.
- Sept. 22 E. Maddoloni vs. State; appeal; dismissed and affirmed.
- Sept. 22 E. F. Robin vs. State; appeal; dismissed and affirmed.
- Sept. 22 Eddie Coin vs. State; appeal; dismissed and affirmed.
- Sept. F. W. King vs. State; appeal; dismissed and affirmed.
- Oct. 18 State vs. Richard Haywood; murder; not guilty.
- Oct. 20 State vs. Louis Archer; murder; convicted.
- Oct. 26 Cleve Yates vs. State; appeal; dismissed and affirmed.
- Oct. 26 Eddie Andrews vs. State; appeal; dismissed and affirmed.
- Oct. 26 Bob Long vs. State; appeal; dismissed and affirmed.
- Oct. 26 C. K. Weaver vs. State; appeal; dismissed and affirmed.
- Oct. 26 G. C. Polk v. State; appeal; dismissed and affirmed.
- Oct. 26 Andrew Gaskins vs. State; appeal; dismissed and affirmed.
- Oct. 26 George Nuccio vs. State; appeal; dismissed and affirmed.
- Nov. 8 In Re: Albert Dewey Hunt; habeas corpus; discharged.
- Nov. 16 Re: Artie Colson; habeas corpus.
- Nov. 17 State vs. George Smith, alias Outlaw; murder; convicted.
- Dec. 2 State vs. John Reid; murder; convicted.
- Dec. 7 In Re: Daniel F. Morton; habeas corpus; discharged.
- Dec. 8 State vs. Adolphus Howard; murder; convicted.
- 1928.
- Jan. 9 State vs. Bert O'Neal; murder; convicted.
- Jan. 12 State vs. Francisco Jiminez; murder; convicted.
- Feb. 1 C. J. Weaver vs. State; appeal; dismissed and affirmed.
- Feb. 1 In Re: Bill Young; habeas corpus; writ denied; appealed to Supreme Court.
- March 26 State vs. Rosa Watson; murder; convicted.
- March 27 State vs. Lillie May Green; murder; convicted.
- March 28 State vs. Theodore Brown, alias Buster Brown; rape; convicted.
- June 27 A. E. Mountain vs. State; appeal; dismissed and affirmed.
- June 27 Beatrice Jones vs. State; appeal; dismissed and affirmed.
- June 27 Frank Edwards, alias Sonny Edwards vs. State; appeal; dismissed and affirmed.
- July 11 Alto Klay and Lyman Reed vs. State; appeal; argued and submitted.
- July 19 State vs. Paul Crumpler; rape; convicted.
- July 28 Sam and Charles Pitisci vs. State; appeal; affirmed.
- Aug. 6 Lucas Gullo vs. State; appeal; reversed.
- Aug. 10 State vs. Pedro Leon, alias Pica; murder; convicted.
- Aug. 27 State vs. Henry Graham; murder; convicted.
- Sept. 1 State vs. Jose Pelaez; murder; not guilty.
- Sept. 7 State vs. Janie Crutcher; murder; convicted of second degree murder; new trial granted; transferred to Criminal Court.
- Nov. 20 State vs. Albert Williams; rape; convicted.

- Nov. 14. State vs. Carl Roberts; assault to rape; transferred to Criminal Court.
- Nov. 14. State vs. Charles Brown; murder; not arrested.
- Nov. 22. In Re: George Nuccio; habeas corpus; writ denied.
- Nov. 22. J. H. Ellis vs. State; appeal; argued and submitted.

February 6, 1929.

In addition to the criminal cases above stated, the following civil causes were handled and disposed of by Charles B. Parkhill, Esquire, State Attorney of the Thirteenth Judicial Circuit of the State of Florida, during the years of 1927 and 1928:

1927.

- Jan. 27. City of Plant City vs. State; validation of \$58,000.00 bonds.
- March 8. County of Hillsborough vs. State; validation of \$52,000.00 bonds.
- May 14. City of Tampa vs. State; validation of \$30,000.00 bonds.
- June 20. Special Tax School District No. 53 vs. State; validation of \$25,000.00 bonds.
- June 20. Special Tax School District No. 11 vs. State; validation of \$42,000.00 bonds.
- June 29. Special Tax School District No. 18 vs. State; validation of \$100,000.00 bonds.
- July 19. Special Tax School District No. 57 vs. State; validation of \$25,000.00 bonds.
- Aug. 20. Special Tax School District vs. State; validation of \$100,000.00 bonds.
- Aug. 26. City of Tampa vs. State; validation of \$300,000.00 bonds.
- Sept. 5. County of Hillsborough vs. State; validation of \$75,000.00 bonds.
- Sept. 8. Board of Public Instruction of Hillsborough County vs. State; validation of \$100,000.00 bonds.
- Sept. 15. Plant City Special Road and Bridge District of Hillsborough County vs. State; validation of \$120,000.00 bonds.
- Sept. 28. Special Tax School District No. 36 vs. State; validation of \$70,000.00 bonds.
- Oct. 6. Juan Lugriz vs. State; removal of disability of insanity.
- Nov. 10. City of Plant City vs. State; validation of \$25,000.00 bonds.
- Oct. 11. North Tampa Special Road and Bridge District, Hillsborough County, vs. State; validation of \$75,000.00 bonds.
- Oct. 11. Lake Fern Special Road and Bridge District of Hillsborough County vs. State; validation of \$306,000.00 bonds.

1928.

- Jan. 3. Special Tax School District No. 7 vs. State; validation of \$20,000.00 bonds.
- April 5. G. M. Denton vs. State; removal of disability of insanity.
- May 1. Catherine Waldon vs. State; removal of disability of insanity.
- May 4. Josephine E. Flowers vs. State; removal of disability of insanity.
- Oct. 19. Robert E. Gregory vs. State; removal of disability of insanity.
- Nov. 8. W. H. Young vs. State; removal of disability of non-age.
- No. 19. Special Road and Bridge District No. 5 vs. State; validation of \$42,000.00 bonds.
- Nov. 19. County of Hillsborough vs. State; validation of \$171,000.00 bonds.
- Dec. 27. Special School District No. 7; validation of \$15,000.00 bonds.

CHARLES B. PARKHILL.

REPORT OF J. FRANK ADAMS, STATE ATTORNEY, FOURTEENTH JUDICIAL CIRCUIT, BLOUNTSTOWN, FLA.

February 7, 1929.

Hon. Fred Davis, Attorney General,
Tallahassee, Fla.

Dear Sir:—Pursuant to your request, I have gathered as best I could the desired data in connection with the fourteenth judicial circuit for the years 1927 and 1928, which is as follows, which I am sorry to say is not complete, owing to the fact that I have been sick for almost three weeks and no one could get the data for me, however, it is approximately correct:

Number of causes investigated before the grand jury, 251; number of indictments returned, 185; number of indictments returned for felonies, 180; number of indictments for misdemeanors, 5, and estimated number of convictions and pleas of guilty, 150.

With reference to making recommendations as to any change in our laws, will state that the present system of procuring jurors is an insult to common decency and should be remedied in some way. I have also had occasion (however, not recently) to investigate our laws concerning false imprisonment, and unless amended since I last looked into the matter, it is very defective.

Am indeed sorry that I have been unable to get this data to you ere this, but have done the best I could.

Respectfully yours,

J. FRANK ADAMS.

REPORT OF STATE ATTORNEY L. R. BAKER, WEST PALM BEACH,
FOR THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA.

Date of Indictment—1927.

Feb. 10—Bessie Anderson, murder; manslaughter.

Feb. 10—J. V. Landes, murder; acquitted.

Feb. 10—Larry James, murder; manslaughter.

Feb. 10—Leonard Hill, Sam Hill and May Jones, murder; Leo Hill and May Jones convicted of manslaughter; Sam H. acquitted.

Feb. 16—E. H. Walker et al., murder; transferred to Federal Court.

June 8—D. S. Hilliard, murder; acquitted.

June 8—Lee Hunt, murder; acquitted.

June 8—Clarence Worthy, murder; manslaughter.

June 8—Cecil Messer, murder; manslaughter.

Nov. 16—L. T. Creech, murder; acquitted.

Nov. 16—John Childs, carrying concealed weapons; transferred to Criminal Court.

Nov. 16—R. L. Saunders, rape; acquitted.

Four investigations into criminal matters during 1927 resulted in no true bills.

1928—

April 2—James McKinney, manslaughter; transferred to Criminal Court.

April 2—Mark Rafalsky and A. T. Herd, obtaining money under false pretense; transferred to Criminal Court.

June 7—LeRoy Goshea, Clinton Love and Ed Cox, murder; acquitted.

June 7—John Thomas Tucker, murder; nolle prossed.

Nov. 8—Irvin Worthy, murder; second degree.

Nov. 8—Grover Henry, murder; manslaughter.

Three matters investigated resulted in no true bills in 1928.

SIXTEENTH CIRCUIT—NO REPORT.

REPORT OF STATE ATTORNEY C. A. BOYER, FOR SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA, 1927-28.

As you know, there is in Orange county a Criminal Court of Record and during my administration which commenced June 10, 1927, the following are a list of cases handled by me during this period of time, to-wit:

Murder, 12; assault with intent to murder, 2; rape, 1, and kidnapping, 1.

In Osceola county, where there is no Criminal Court of Record, I have the prosecution of all felonies and the following is a record of the cases tried by me in Osceola county during my administration thus far:

Murder, 2; withholding support from wife and child, 3; larceny, 5; carnal intercourse, 1; receiving stolen goods, 5; rape, 1; selling intoxicating liquor, 8; manslaughter, 1; perjury, 4; assault with intent to murder, 5; embezzlement, 3; breaking and entering with intent to commit a felony, 1; assault with intent to rape, 3; compounding a felony, 1; carrying concealed weapons, 1.

I wish to report that both in Osceola county and Orange county, which comprises the Seventeenth Judicial Circuit, both dockets, as far as criminal cases are concerned, are up and at no time do I allow cases to go over and have had the good fortune thus far not to have any continuances granted. This naturally keeps the dockets from getting congested and grants to the defendant a speedy trial.

Very truly yours,

C. A. BOYER.

REPORT OF STATE ATTORNEY FOR EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA FOR 1927-28.

As you know, a number of bond validations are always being handled by the State Attorney, as also proceedings for restoration to judicial sanity, other than these matters the following business has been disposed of, namely:

SPRING TERM, 1927.

Manatee County, Florida—Twenty-one true bills, 15 no bills, 14 bond estreature proceedings, 8 convictions, 4 acquittals, 2 mistrials and 1 murder case.

SPRING TERM, 1927.

Sarasota County, Florida—Thirty-one true bills, 11 no bills, no bond estreature proceedings, 7 convictions, 5 acquittals, 1 mistrial and 4 murder cases.

FALL TERM, 1927.

Manatee County, Florida—Twenty-two true bills, 20 no bills, 24 bond estreature proceedings, 8 convictions, 5 acquittals, no mistrial and 2 murder cases.

SPRING TERM, 1928.

Manatee County, Florida—Fourteen true bills, 7 no bills, 5 convictions, 2 acquittals, 6 bond estreature proceedings, no murder cases.

FALL TERM, 1928.

Manatee County, Florida—Twenty-three true bills, 20 no bills, 22 bond estreature proceedings, 7 convictions, 4 acquittals, no murder cases.

In the above report convictions include pleas of guilty.

Sarasota county was taken from the Eighteenth Judicial Circuit in July, 1927.

Criminal cases now pending, Manatee County Circuit Court, 35; six continued, 29 not in custody last term of court.

This report includes only felony cases, others are handled in County Court and seldom come before the grand jury.

In addition to criminal and bond cases, itemized above during the period of time covered by this report, probably three dozen criminal appeal cases and habeas corpus cases have been handled by my office, together with approximately a dozen preliminary hearings. In addition, all criminal cases appealed to the Supreme Court from this circuit, have been briefed by me as assistant to the Attorney General.

DEWEY A. DYE.

Criminal cases presented by the grand jury and placed on the trial docket for Highlands county and State of Florida for the years 1927 and 1928:

1927.

1. State vs. Charlie Orr, assault with intent to commit murder; continued; not in custody.
2. State vs. Jesse David, larceny of live stock; nolle prossed, after reversal of conviction by Supreme Court.
3. State vs. Paul Rhyan, Joe Rhyan, Dudley Rhyan and L. L. Rhyan, murder; guilty third degree as to Paul; others not guilty.
4. State vs. Henry James, embezzlement; guilty.
5. State vs. Paul Rhyan, assault intent to murder; not guilty.
6. State vs. George Wilson, embezzlement; not in custody.
7. State vs. Willie Smith, interfering with railroad track; nolle prossed at request of prosecution.
8. State vs. Julius Hyman, murder; not guilty.
9. State vs. J. G. Parker, obtaining money by false pretenses; not guilty.
10. State vs. George B. Walker, embezzlement; nolle prossed (new indictment obtained).
11. State vs. George B. Walker, embezzlement; nolle prossed (new indictment obtained).
12. State vs. George B. Walker, embezzlement; nolle prossed (new indictment obtained).
13. State vs. George B. Walker, embezzlement; nolle prossed (new indictment obtained). See below.
14. State vs. George B. Walker, embezzlement; not guilty.
15. State vs. W. A. Hatchell, obtaining money by false pretenses; not guilty.
16. State vs. Ivey E. Futch, aggravated assault; guilty.
17. State vs. Fred Taylor, forgery; continued; not in custody.
18. State vs. Robert Martin, obtaining property by false pretenses; not guilty.
19. State vs. E. F. Hall, unlawfully deserting, etc., wife and children; continued; not in custody.

FALL TERM, 1927.

20. State vs. Charlie Orr, same as No. 1; not in custody.
21. State vs. George B. Walker, embezzlement; same as No. 10; continued.
22. State vs. George B. Walker, embezzlement; same as No. 11; continued.
23. State vs. George B. Walker, embezzlement; same as No. 12; continued.
24. State vs. Fred Taylor, forgery; same as No. 17; not in custody.
25. State vs. George E. Wilson, embezzlement; same as No. 6; not in custody.
26. State vs. E. F. Hall, same as No. 19; not in custody.
27. State vs. Katie Williams, murder; continued.
28. State vs. Joseph Haywood, larceny of auto; guilty.
29. State vs. William T. Mack, grand larceny; guilty.
30. State vs. Julius Hyman, receiving stolen property; guilty.
31. State vs. Pleas W. Van Meter, deserting child; not guilty.
32. State vs. George B. Walker, embezzlement; same as 21 and 10; guilty.
33. State vs. George B. Walker, embezzlement; same as 22 and 11; continued.
33. State vs. George B. Walker, embezzlement; same as 23 and 12; continued.
34. State vs. Rosa Mae and Mildred Spradlin, housebreaking, intent to commit a misdemeanor; guilty as to Rosa Mae, not guilty for Mildred.
35. Rosa Mae Spradlin, assault, intent to murder; guilty.
36. State vs. Stephen G. Eastwood and George Eastwood, housebreaking, intent to commit felony; nolle prossed.
37. State vs. Joe Williams, housebreaking, intent to commit felony; (1) guilty.
38. State vs. Joe Williams, housebreaking, intent to commit felony; (2) guilty.
39. State vs. Joe Williams, housebreaking, intent to commit felony; (3) guilty.
40. State vs. Lonnie Folsome, breaking, intent to commit a felony; nolle prossed.
41. State vs. Arthur Oates and Victoria Thomas, murder; nolle prossed; no evidence to convict.
42. State vs. William Russell, larceny of auto; guilty.

SPRING TERM, 1928.

43. State vs. Charlie Orr, same as No. 1; not in custody.
44. State vs. George B. Walker, same as Nos. 11 and 22; continued.
44. State vs. George B. Walker, same as Nos. 12 and 23; continued.
45. State vs. Fred Taylor, same as No. 17; continued; not in custody.
46. State vs. George B. Wilson, same as No. 6; continued; not in custody.
47. State vs. E. F. Hall, same as No. 19; continued; not in custody.
48. State vs. Katherine Williams, murder; guilty third degree.
49. State vs. Paul Shanks, desertion of wife; not in custody; continued.
50. State vs. Tom Yancy, obtaining property under false pretenses; continued; motion of defendant.

51. State vs. Lewis Taylor, manslaughter; continued; motion of defendant.

52. State vs. Willie Montgomery, assault intent to murder; not guilty.

53. State vs. Bill Thomas, housebreaking, intent to commit a felony; guilty.

54. State vs. Johnnie Jones, Lee Hamilton and Albert Brown, assault with intent to murder; guilty Jones and Hamilton; not guilty Brown.

55. State vs. Shellie Oliver, manslaughter; not guilty.

56. State vs. J. Trottie Bowers, bastardy; settled case out of court; nolle prossed.

FALL TERM, 1928.

57 to 62 same as above Nos. 43 to 47, inc.

63 same as No. 49.

64 same as above No. 50.

65. State vs. Lewis Taylor, manslaughter; nolle prossed and No. 66 substituted by new indictment.

66. Lewis Taylor, murder; not guilty.

67. State vs. Clarissa Robertson and Arthur Bennett, housebreaking, intent to commit a felony; guilty as to Clarissa; not guilty as to Bennett.

68. State vs. Edward G. Rhodes, bigamy; guilty.

69. State vs. Claud Cunningham, Willie Lawson and Jim Merritt, robbery; guilty.

70. State vs. Willie May David, grand larceny; continued; not in custody.

71. State vs. Allen V. Westberry, unlawful sexual intercourse with unmarried female under 18, etc.; guilty.

72. Willie Burdin and Leroy Stewart, housebreaking, intent to commit a felony; guilty as to Burdin; not guilty as to Stewart.

73. State vs. Marie Moore, murder; continued.

DESOTO COUNTY

1. State vs. Marvin Carver and Thomas Mulford, larceny of live stock; guilty and sentenced.

2. State vs. Valmar Herman and Douglas Herman, breaking and entering building with intent to commit a misdemeanor therein; nolle prossed.

3. State vs. W. M. Holland, breaking and entering with intent to commit a felony; guilty and sentenced.

4. State vs. Phillip Anderson, embezzlement and conversion; continued.

5. State vs. Phillip Anderson, embezzlement and conversion; continued.

6. State vs. Carl Hahn, grand larceny; guilty and sentenced.

7. State vs. Robert Lee Stinbridge, larceny of automobile; guilty and sentenced.

8. State vs. Don Lewis, embezzlement of automobile; guilty and sentenced.

9. State vs. V. O. Fussell, embezzlement; indictment quashed.

10. State vs. Abraham Jelks, murder; acquitted.

11. State vs. J. B. Austin and Mrs. J. B. Austin, embezzlement; nolle prossed.

12. State vs. Walter Bush Dykes, forgery; motion granted to quash.

13. State vs. J. E. Guest, embezzlement; nolle prossed.

14. State vs. H. M. Greenberg, obtaining money under false pretenses.
15. State vs. J. E. Guest, obtaining property under false pretenses; guilty and sentenced; same case as party on No. 13.
16. State vs. Wenton Curry, larceny of live stock; nolle prossed.
17. State vs. Joe Johnson, forgery; guilty and sentenced.
18. State vs. Joe Johnson, forgery; guilty and sentenced.
19. State vs. Seymore Smith, manslaughter; guilty and sentenced.
20. State vs. Earl H. Hickman, larceny of automobile; acquitted.
21. State vs. Olie Elum, forgery; guilty and sentenced.
22. State vs. Marion M. Brown, deserting and withholding means of support from wife and child; nolle prossed.
23. State vs. E. T. Bailey and G. D. Huss, Jr., obtaining property under false pretenses; motion to quash granted.
24. State vs. J. W. Wade, unlawfully deserting and withholding means of support of wife and child; nolle prossed.
25. State vs. Pythian Smith, grand larceny; guilty and sentenced.
26. State vs. David Jones, grand larceny; guilty and sentenced.
27. State vs. Willie Jones, forgery; guilty and sentenced.
28. State vs. Otis C. Peters, unlawfully withholding means of support from his minor children; guilty and sentenced.
29. State vs. Ed. Smith, unlawful carnal intercourse; continued.
30. State vs. J. C. Howell, forgery and uttering instrument; continued.
31. State vs. Paul Stephens, unlawfully deserting and withholding means of support from wife and child; guilty and sentenced.
32. State vs. Phillip Anderson, embezzlement and conversion; continued.
33. State vs. Phillip Anderson, embezzlement and conversion; continued.

HARDEE COUNTY CASES— 1927 AND 1928.

SPRING TERM, 1927.

1. State vs. L. Lazarus, forgery; nolle prossed.
2. State vs. C. L. Jones, alias W. J. Webb, housebreaking; nolle prossed; defendant dead.
3. State vs. A. L. Turner, obtaining money under false pretenses; continued.
4. State vs. Arthur Williams, shooting into dwelling house; continued; motion of defendant.
5. State vs. T. J. Rivers, shooting into dwelling house; continued; motion of defendant.
6. State vs. Finas Albritton, forgery; guilty.
7. State vs. Finas Albritton, forgery; guilty.
8. State vs. Finas Albritton, forgery; guilty.
9. State vs. Elbert Coker, robbery; guilty.
10. State vs. Joe Bond, alias Joe Bond, murder; guilty, second degree.
11. State vs. P. A. Chauncey, desertion of wife; guilty.
12. State vs. J. B. Jack, larceny; capias issued; not in custody.
13. State vs. Noah Kirkland, forgery; guilty.
14. State vs. Noah Kirkland, forgery; guilty.
15. State vs. Sharman Philips, assault intent to murder; guilty.
16. State vs. W. A. Stewart, grand larceny; continued; motion of defendant.

17. State vs. Elbert Coker, robbery; guilty.
18. State vs. E. W. Downey, disposing of personal property under conditional sales contract; not guilty.
19. State vs. Cliff Cochran, forgery; guilty.
20. State vs. Cliff Cochran, forgery; guilty.
21. State vs. Henton Smith, disturbing religious worship; nolle prossed request church officials.
22. State vs. Charles G. Adler, embezzlement; not in custody; capias issued; continued.

FALL TERM, 1927.

1. State vs. Charlie Bryant, murder; guilty third degree.
2. State vs. Catherine Singleton, murder; guilty first degree.
3. State vs. J. C. Jones and Athen Albritton, assault intent to murder; guilty.
4. State vs. John Keene, larceny of auto; not guilty.
5. State vs. Carl Whidden, grand larceny; nolle prossed; request of prosecutor.
6. State vs. Charlie Lowe, larceny of live stock; guilty.
7. State vs. Charlie Lowe, larceny of live stock; nolle prossed after conviction other.
8. State vs. Charlie Lowe, Sil McClelland and George Williams, larceny of live stock; not guilty.
9. State vs. Charlie Lowe, altering brands; indictment quashed.
10. State vs. Harlie McClelland, larceny of live stock; continued.
11. State vs. Evan Petkow, larceny of live stock; continued.
12. State vs. King Elam Albritton, desertion of wife and child; guilty.
13. State vs. John W. Gaylard, desertion of wife and children; guilty.
14. State vs. Isaach Albritton, carnal intercourse unmarried female under 18, etc.; parties married after indictment and case nolle prossed.
15. State vs. B. M. Parker, forgery; guilty.
16. State vs. Jake Moore, forgery; guilty.
17. State vs. O. W. Poncier, forgery; not guilty.
18. State vs. Frank Moore, forgery; not guilty.
19. State vs. Hershell Whaley, aggravated assault; guilty.
20. State vs. E. G. Lewis, embezzlement; nolle prossed after restitution and request of prosecutor.

SPRING TERM, 1928.

1. State vs. Higdon Lyles, forgery; guilty.
2. State vs. Higdon Lyles, forgery; guilty.
3. State vs. Isaac Albritton, desertion of wife; guilty.
4. State vs. Willie Smith, breaking and entering building to commit felony; guilty.
5. State vs. Willie Smith, breaking and entering building to commit felony; guilty.
6. State vs. M. C. Kirkland, disposing of personal property under conditional sale; nolle prossed; request of prosecution after settlement.
7. State vs. Roscoe Tidwell and Leslie Lowe, breaking and entering to commit felony; guilty.
8. State vs. Pete Brown, violation of prohibition law, second offense; not guilty.

9. State vs. George D. Huss, violation of prohibition law, second offense; not guilty.

10. State vs. A. G. Bray, violation of prohibition law, second offense; not guilty.

11. State vs. W. D. McInnis, forgery; not guilty.

12. State vs. W. D. McInnis, embezzlement; continued.

13. State vs. W. D. McInnis, embezzlement; continued.

14. State vs. W. D. McInnis, embezzlement; continued.

15. State vs. W. D. McInnis, embezzlement; continued.

16. State vs. W. D. McInnis, embezzlement; continued.

FALL TERM, 1928.

1. State vs. Q. J. Spillers, desertion of wife and children; guilty.

2. State vs. C. D. Owens, aggravated assault; guilty.

3. State vs. Joe Adkins, housebreaking to commit a felony; guilty.

4. State vs. ——— Mercer, aggravated assault; guilty.

5. State vs. ———, housebreaking to commit a felony; guilty.

6. State vs. ———, housebreaking to commit a felony; guilty.

7. State vs. ———, larceny of live stock; not guilty.

NOTE: I have been unable to get complete record of the cases reported by the grand jury for Hardee county Fall term 1928, so as to give name of each defendant and result of each case and that will be supplied later if desired.

However, in addition to the foregoing seven cases reported, there were four others, all being felonies.

Respectfully submitted.

M. R. McDONALD

State Attorney 19th Circuit.

REPORT OF ARTHUR GOMEZ, STATE ATTORNEY FOR TWENTIETH JUDICIAL CIRCUIT OF FLORIDA

Only one criminal case:

State vs. Archer Sheppard; bastardy.

REPORT OF ANGUS SUMNER, STATE ATTORNEY FOR TWENTY-FIRST JUDICIAL CIRCUIT OF FLORIDA FOR 1927-28

The number of persons tried in Martin County, Florida:

1927 Convicted—Forgery, 1; breaking and entering railroad car, 2; rape, 1; murder, 8; larceny, 2; assault to kill, 1; breaking and entering, 3.

Acquitted—Receiving stolen goods, 1; breaking and entering, 1.

1928 Convicted—Larceny, 7; murder, 2; breaking and entering, 1.

Acquitted—Larceny, 1; shooting into house, 1.

1929 Convicted—Larceny, 4; breaking and entering, 1; assault to rape, 1; murder, 1; assault to murder, 1; forgery, 2.

Acquitted—None.

The number of persons tried in St. Lucie County, Florida:

1927 Convicted—Larceny, 6; forgery, 1; assault to kill, 1; desertion, 1; murder, 1.

Acquitted—None.

1928 Convicted—Larceny, 1; sodomy, 1; breaking and entering, 1.

Acquitted—None.

The number of persons tried in Okeechobee County, Florida:

- 1927 Convicted—Murder, 2.
 Acquitted—Forgery, 1.
- 1928 Convicted—Breaking and entering, 2; forgery, 2; grand larceny, 1.
 Acquitted—Grand larceny, 1; forgery, 1.
- The number of persons tried in Indian River County, Florida:
- 1927 Convicted—Murder, 3; assault to kill, 2; possession of liquor, second offense, 1; breaking and entering, 1.
 Acquitted—Bigamy, 1.
- 1928 Convicted—Forgery, 2; breaking and entering, 3; grand larceny, 4; assault to rape, 1.
 Acquitted—Manslaughter, 1; adultery, 2.

REPORT ON DISPOSITION OF CRIMINAL CASES IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA, SINCE THE INCEPTION OF SAID COURT:

- State vs. Lon Gurley, murder, 2nd degree; July 6, 1927; nolle prossed.
- State vs. Grover Cleveland Greenway, bigamy; July 6, 1927; nolle prossed.
- State vs. Thomas Holliday, forgery; July 6, 1927; nolle prossed.
- State vs. Will Harper, breaking and entering; July 8, 1927; plead guilty.
- State vs. Will Harmon, breaking and entering; July 8, 1927; plead guilty.
- State vs. Frank Washington, breaking and entering; July 8, 1927; plead guilty.
- State vs. Thelbert Wheeler, breaking and entering; July 8, 1927; plead guilty.
- State vs. Walter Smith, breaking and entering; July 8, 1927; plead guilty.
- State vs. Will Albert Williams, breaking and entering; July 8, 1927; plead guilty.
- State vs. Dink Moody, breaking and entering; July 8, 1927; plead guilty.
- State vs. Willie Thomas, breaking and entering; July 8, 1927; plead guilty.
- State vs. William A. Hicks, murder; July 12, 1927; nolle prossed.
- State vs. John Freeman, murder; July 13, 1927; acquitted.
- State vs. Grover T. Usher, manslaughter; July 15, 1927; acquitted.
- State vs. Jimmie Dorrington, breaking and entering; July 18, 1927; acquitted.
- State vs. Scipio Jenkins, assault with intent to murder; July 19, 1927; guilty assault with intent to commit manslaughter.
- State vs. Eugene Berry and Eddie McCray, murder, first degree; September 3, 1927; guilty with recommendation of mercy.
- State vs. William A. Hicks, murder, first degree; September 11, 1927; guilty, recommendation.
- State vs. W. W. Wittkamp, manslaughter; November 16, 1927; acquitted.
- State vs. Horton Hicks, murder, first degree; November 17, 1927; guilty, recommendation.
- State vs. J. Gordon Harden, manslaughter; November 18, 1927; acquitted.
- State vs. F. M. Dyer, embezzlement; November 18, 1927; nolle prossed.
- State vs. John W. Green, murder, first degree; January 14, 1928; acquitted.
- State vs. John W. Green, murder, first degree; January 14, 1928; nolle prossed.

Harry Martin, rape; January 14, 1928; plead guilty assault with intent to rape.

State vs. Robert Whitehurst, robbery, armed; January 14, 1928; plead guilty.

State vs. Olver Edwards, robbery, armed; January 14, 1928; plead guilty.

Letha Boler, murder, first degree; March 22, 1928; plead guilty murder second degree.

State vs. Annie May Parks, murder, first degree; March 22, 1928; plead guilty manslaughter.

State vs. Arthur Guest, unlawful carnal intercourse; December, 1928; nolle prossed.

William Conkle, attempt carnal intercourse; December 21, 1928; plead guilty.

State vs. Louis Taylor, murder, first degree; January 7, 1929; guilty manslaughter.

State vs. Lisbon Simpkins, murder, first degree; January 7, 1929; acquitted.

State vs. Monty Myers, manslaughter; January 31, 1929; guilty.

State vs. Fred Pierson, robbery, armed; February 1, 1929; acquitted.

The grand jury convened in said circuit on the following dates:

July 7th, 1927; July 8th, 1927; July 9th, 1927. On this date, in addition to indictments returned and listed as tried hereinabove, the following charge was disposed of:

Anna Knight; perjury; no true bill.

July 12th, 1927; July 13th, 1927; July 14th, 1927: Laurie Weston; forgery; no true bill.

October 25th, 1927: Edward Forbes; highway robbery; no true bill.

March 22, 1928: John A. Whittaker; desertion; no true bill. M. S. Spates; manslaughter; no true bill.

October 11th, 1928: William Devine; manslaughter; no true bill. C. C. Livingston; murder; no true bill. Maggie Cohen; aiding escape; no true bill. Ben Parrish; manslaughter; no true bill. G. J. Moore; robbery, armed; no true bill.

January 14th, 1929; January 18th, 1929.

The following indictments have been returned against the following named defendants, and have not been tried to date:

F. J. Grunenthal, embezzlement; F. J. Grunenthal, embezzlement; C. L. McFaddyn, grand larceny; Louis Austin, grand larceny; Howard Cade, breaking and entering; Claude Reynolds, obtaining property under false pretenses.

I, Louis F. Maire, State Attorney for the Twenty-second Judicial Circuit in and for Broward County, Florida, do hereby certify that the above and foregoing is a true and correct record of the criminal cases disposed of since the inception of said circuit in June, 1927.

This February 4th, 1929.

LOUIS F. MAIRE,
State Attorney, 22nd Judicial Circuit.

LIST OF CASES WHERE INDICTMENTS WERE FOUND AND RETURNED BY THE GRAND JURY TWENTY-THIRD JUDICIAL CIRCUIT OF FLORIDA, FOR THE YEAR A. D. 1927:

BREVARD COUNTY

- April 1 H. H. Hart, C. C. Hart and W. D. Hart; grand larceny.
- " Ralph Whiting; grand larceny.
- " Louis Tamer; resisting an officer with violence to his person.
- " S. S. Cooper; aiding an escape.
- " Fred R. Brown; unlawful carnal intercourse with an unmarried female under the age of 18 years.
- " Fred R. Brown; rape.
- " Albert Thomas; assault with intent to commit murder in first degree.
- " Will Brown; attempt to break and enter with intent to commit a felony.
- " Pearl Adams, Mamie Adams, Gladys Jones, Carrie Lee Jones; murder in the first degree.
- " Jessie Crawford; aiding escape.
- " Roosevelt Bullard; murder in the first degree.
- " Frank Brown and Charlie Bell; breaking and entering with intent to commit a felony.
- " Alex Pollock; assault with intent to commit murder in first degree.
- " Samuel Dixon; aggravated assault.
- " Thomas Blye; aggravated assault.
- " Samuel Dixon; assault with intent to commit murder in first degree.
- " Jacob Rock; assault with intent to commit murder in first degree.
- " Josephine Senger and J. W. Griffis; breaking and entering with intent to commit a felony.
- " Josephine Senger and J. W. Griffis; breaking and entering with intent to commit a felony.
- " James Martin; forgery.
- " E. E. Duckworth; obtaining money under false pretenses.
- " Fred R. Brown; rape.
- " Fred R. Brown; unlawful intercourse with female, etc.
- " John Setters and Cecil Platt; grand larceny.
- " E. E. Duckworth; obtaining money under false pretenses.
- " Josephine Senger and J. W. Griffis; breaking and entering with intent to commit felony.
- " Josephine Senger and J. W. Griffis; breaking and entering with intent to commit felony.
- " John Setters, Cecil Platt; grand larceny.
- " W. L. McKnight; assault with intent to commit rape.
- " Henry Montgomery; forgery.
- " Philip K. Eachbach; desertion and non-support of his minor child.
- " William Lange and Jack Smith; larceny.
- " Ben Burch; murder in first degree.
- " Willie Pugh; manslaughter.
- " Thomas Blye; assault with intent to commit murder, first degree.
- " Roosevelt Bullard; murder in first degree.

- April 1. Jesse Crawford; aiding escape.
- " Rufus T. Shannon; breaking and entering with intent to commit a misdemeanor.
- " E. W. Cheatham; disposing of or removing personal property under lien, etc.
- " Rufus Shannon; grand larceny.
- Oct. 8 Napoleon Phillips; murder in first degree.
- " Ross Wilson; murder, first degree.
- " Jack King and Clarence Robinson; breaking and entering with intent to commit a felony.
- " Jack King and Clarence Robinson; breaking and entering with intent to commit a felony.
- " Speedy Jackson; breaking and entering with intent to commit a felony.
- " Speedy Jackson; breaking and entering with intent to commit a felony.
- " Sam King; breaking and entering with intent to commit a felony.
- " Speedy Jackson; breaking and entering with intent to commit a felony.
- " Nick Boston; changing marks of an animal not his own.
- " L. J. Meadows; embezzlement.
- " D. J. O'Connell; forgery.
- " D. J. O'Connell; forgery.
- " Edward Stevens, alias Earl Johnson; forgery.
- " L. J. Meadows; forgery.
- " L. J. Meadows; forgery.
- " L. J. Meadows; forgery.
- " L. J. Meadows; forgery.
- " Roy Ruskin, alias Roy Raskin; aggravated assault.
- " Frank Milton; robbery.
- " Frank Milton; robbery.
- " Squire Nixon and Maude Nixon; grand larceny.
- " M. L. Hudgins, alias M. W. McCraw; grand larceny.
- " James Taylor, alias James Lewis, and Harry Snowden; grand larceny.
- " Estell Davis; grand larceny.
- " DeWitt Hall; assault with intent to commit murder in first degree.
- " Tom Wilson; unlawful possession of fish.
- " Russ Norwood; unlawful possession of fish.
- " Russ Norwood; unlawful possession of fish.
- " Fred Douglass; breaking and entering with intent to commit a felony.
- " Ernest James; breaking and entering with intent to commit a misdemeanor.
- " Allen Lowery; assault with intent to commit murder in first degree.
- " George Brown; grand larceny.
- " Sam Graham; keeping a gambling house.
- " Ned Ford; desertion of wife and children and withholding support.
- " C. W. Carr; removing property out of the county without permission of holder of retain title contract.
- " D. J. O'Connell; forgery.
- " L. J. Meadows; embezzlement.

- Oct. 8. H. B. Stowers; crime against nature.
 " H. B. Stowers; crime against nature.
 " L. J. Meadows; embezzlement.
 " L. J. Meadows; forgery.
 " L. J. Meadows; forgery.
 " L. J. Meadows; embezzlement.
 " R. C. Myers; obtaining money under false pretense.
 " E. E. Dealing; grand larceny.
 " R. C. Myers; falsely impersonating an officer.

SEMINOLE COUNTY

- Feb. 6 Henry Calary; assault with intent to commit murder.
 " Willie Jones; buying and receiving stolen goods.
 " Philip Washington; buying and receiving stolen goods.
 " Ben Reynolds; buying and receiving stolen goods.
 " D. J. Williams; buying and receiving stolen goods.
 " Joe Johnson; breaking and entering.
 " W. B. Ballard; larceny.
 " I. W. Godbee; embezzlement.
 " Robert Adams; bigamy.
 " J. E. White; murder, first degree.
 " George Mezone, Lewis Carter and Joe Dolly; breaking and entering.
 " James Hall, Will McCoy, May Roberts; robbery.
 " Otha White and Eugene Early; breaking and entering.
 " Otha White and Frank Carr; breaking and entering.
 " W. A. Flannigan; breaking and entering.
 " John Henderson; murder, first degree.
 " H. R. Calary; murder, first degree.
 " Robert Carlton Pittman; murder, first degree.
 " Truman Holloway; aggravated assault.
 " Winfield Bowman; guilty robbery.
 " Lewis Tabor; murder, first degree.
 " Booker Scott; grand larceny.
 " Roy Black; murder, first degree.
 " Frank Thompson; grand larceny.
 " Walter Williams; assault with intent to commit murder, first degree.
 " Willie Johnson; grand larceny.
 " Fred Bellamy; breaking and entering.
 " Julius Mack and Nelson Bush; grand larceny.
 " Chester Allen and Emanuel Rowell; breaking and entering.
 " Forrest Lake and A. R. Key; violation banking laws.
 " A. R. Key; violation banking laws.
 " Forrest Lake; embezzlement and misapplication of bank funds.
 " Forrest Lake and A. R. Key; embezzlement and misapplication of bank funds.
 " Forrest Lake and A. R. Key; embezzlement and misapplication of bank funds.
 " Forrest Lake; violation banking laws.
 " Forrest Lake; borrowing in excess of 10 percent.
 " A. R. Key; violation of banking laws.

- Feb. 6. A. R. Key; violation of banking laws.
- " A. R. Key and Forrest Lake; making false entries in bank books.
- " Forrest Lake and A. R. Key; embezzling bank funds.
- " Forrest Lake; malpractice in office.
- " Forrest Lake; malpractice in office.
- " A. R. Key and Forrest Lake; making false entries.
- " A. R. Key and Forrest Lake; making false statement to Comptroller.
- " A. R. Key and Forrest Lake; making false statement to Comptroller.
- " A. R. Key and Forrest Lake; making false entries on report to Comptroller.
- " Forrest Lake; embezzlement of bank funds.
- " A. R. Key; embezzlement of bank funds.
- " A. R. Key and Forrest Lake; embezzlement and misapplication of bank funds.
- " Forrest Lake and A. R. Key; embezzlement and misapplication of bank funds.
- " Ernest Amos; malpractice in office.
- " Ernest Amos; malpractice in office.
- " F. F. Dutton; issuing worthless draft.
- " F. F. Dutton; issuing worthless draft.
- " F. F. Dutton; issuing worthless draft.
- " F. F. Dutton; issuing worthless draft.
- " F. F. Dutton; issuing worthless draft.
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- " F. F. Dutton; issuing worthless draft.
- " F. F. Dutton; issuing worthless draft.
- " F. F. Dutton; issuing worthless draft.
- " Charlie Giles; forgery.
- " Walter Grant; embezzlement.
- " Albert Livingston and Catherine Williams; breaking and entering.
- " Endell Williams; breaking and entering.
- " Ed Spivey; breaking and entering.
- " Joe Beal; breaking and entering.
- " George Williams; embezzlement.

SUMMARY.

Murder cases, 13; rape cases, 2; robbery cases, 4; embezzlement cases, 15; breaking and entering with intent to commit a felony, 25; grand larceny, 8; assault with intent to commit murder, 9; forgery, 10; all other cases being felonies, 62. Total, 148.

The above report represents cases only where indictments were actually returned and filed, and indictments are returned in this circuit in about or less than 50 per cent of the investigations.

M. B. SMITH,

State's Attorney, 23rd Judicial Circuit, Brevard County, Florida.

LIST OF CASES WHERE INDICTMENTS WERE FOUND AND RETURNED BY THE GRAND JURY TWENTY-THIRD JUDICIAL CIRCUIT OF FLORIDA, FOR THE YEAR A. D. 1928.

SEMINOLE COUNTY

- February 6 A. R. Key and Forrest Lake; making false entries.
 " Forrest Lake and A. R. Key; violation of banking laws.
 " Forrest Lake and A. R. Key; embezzlement and misapplication of bank funds.
 " Forrest Lake and A. R. Key; embezzlement and abstraction of bank funds.
 February 17 Forrest Lake; embezzlement and misapplication of bank funds.
 " A. R. Key and Forrest Lake; making false entries in bank books.
 " Forrest Lake; embezzlement and misapplication of funds.
 " A. R. Key and Forrest Lake; embezzlement and misapplication of bank funds.
 " A. R. Key and Forrest Lake, making false entries.
 " A. R. Key and Forrest Lake; making false entries on report to Comptroller.
 February 18 A. R. Key and Forrest Lake; making false entries on report to Comptroller.
 " Forrest Lake and A. R. Key; embezzlement and misapplication of bank funds.
 " A. R. Key and Forrest Lake; making false entries on report to Comptroller.
 " Forrest Lake and A. R. Key; violation of banking laws.
 " A. R. Key and Forrest Lake; violation of banking laws.
 May 25 E. Z. Norris; rape.
 " E. Z. Norris; assault with intent to commit rape.
 " Fred Behrnes and D. A. Muffley; robbery by a person armed.
 " Ida Horn and Owen Washington; murder in first degree.
 " Earl Mathews; breaking and entering.
 " Riley Robertson and J. A. Farless; grand larceny.
 " Albert Jenkins; grand larceny.
 " Isiah Donaldson; murder in first degree.
 " Carl Soles; murder in first degree.
 " Fred Behrnes and D. A. Muffley; robbery by a person armed.
 " Charlie Wesley; breaking and entering.
 " C. M. Hogg; murder in first degree.
 " Charlie Johnson; breaking and entering.
 May 27 Charlie Johnson; breaking and entering.
 " William Brown; murder in first degree.
 " Fred Sallywhite, assault, etc., murder.
 " Sam Pride; desertion.
 " Johnnie Bridges; desertion, etc.
 " Lamar Wilson; forgery.
 " Lamar Wilson; forgery.
 " E. Z. Norris; rape.
 " Fred Behrnes and D. A. Muffley; robbery by a person armed.

May 27 Fred Behrnes and D. A. Muffley; robbery by a person armed.
 " W. D. Lemons; possession intoxicating liquors.

December 7 Enock Boston; forgery.

- " L. H. Ray; wantonly shooting into dwelling.
- " L. H. Ray; assault with intent to commit murder.
- " Frank Williams; breaking and entering.
- " William Ward; assault with intent to commit murder.
- " Carl Bruton; bigamy.
- " Charlie Davis; murder in first degree.
- " Effie May King; murder in first degree.
- " Maxwell LeMoine; kidnapping.
- " Walter Reaves; desertion of child and withholding support.
- " Clisby Washington; assault with intent to murder.
- " J. H. Dodd, desertion and non-support.
- " J. G. Milton; forgery.
- " J. G. Milton; forgery.
- " Hugh Wynn; desertion and non-support.
- " Charles C. Eldridge; desertion and non-support.
- " E. C. Metts; obtaining property under false pretense.

BREVARD COUNTY

March 27 Jesse Perry; manslaughter.

- " Joe Henderson; murder in first degree.
- " Charlie Mathers; breaking and entering with intent to commit a felony.
- " David Harrell; breaking and entering with intent to commit a felony.
- " T. B. Selph; breaking and entering with intent to commit a felony.
- " Jim Beacher; assault with intent to commit murder in first degree.
- " Nathaniel Miller; assault with intent to commit murder in first degree.
- " Ella Harden; assault with intent to commit murder in first degree.
- " Carrol Houston; aggravated assault.
- " Allen Lowery; resisting an officer.
- " A. B. Sumrall; grand larceny.
- " Nannie Hall; receiving stolen goods.
- " Eddie Roberts; breaking and entering with intent to commit a felony.
- " Frank Wesley; breaking and entering with intent to commit a felony.
- " Robert Reed; murder in first degree.
- " Nels Olson; breaking and entering with intent to commit a misdemeanor.
- " John Henry Jones; breaking and entering with intent to commit a felony.
- " John Henry Jones; breaking and entering with intent to commit a felony.
- " O. G. Laney; forgery.
- " Laura Laney; forgery.
- " O. G. Laney; forgery.

- March 27 Laura Laney; forgery.
 " O. G. Laney; forgery.
 " Laura Laney; forgery.
 March 26 Karl Miller; breaking and entering with intent to commit a felony.
 " Karl Miller; breaking and entering with intent to commit a felony.
 " Johnny Johnson and Willie Ferguson; robbery.
 October 16 Vasco Daniels and Blake Williams; breaking and entering with intent to commit a misdemeanor.
 " Stephen E. Owens; desertion and withholding support.
 " D. J. O'Connell and Chesley Clark; aggravated assault.
 " Grady Ellis; embezzlement.
 " Grady Ellis; embezzlement.
 " Grady Ellis; embezzlement.
 " George Bell, alias Ralph Boyd; forgery.
 " George Bell, alias Ralph Boyd; forgery.
 " Alberta Jones; grand larceny.
 " Dewey Luke and R. G. McCain; conspiracy.
 " Frank Powell and Will Ross; grand larceny.
 " Will Ross and Johnnie Brothers; receiving stolen goods.
 " Z. Simmons; breaking and entering with intent to commit a felony.
 " Frank Young, alias Henry Haggey; assault with intent to commit murder in first degree.
 " Dewey Luke and R. G. McCain; impersonating an officer.
 " Lloyd Ellis, James Taylor and Harry Snowden; breaking and entering with intent to commit a felony.
 " D. J. O'Connell; aggravated assault.
 " Chesley Clark; aggravated assault.
 " G. E. Spires; violation of banking laws.
 " G. E. Spires; violation of banking laws.
 " G. E. Spires; violation of banking laws.
 " J. C. McLeod; forgery.
 " J. C. McLeod; forgery.
 " J. C. McLeod; violation of banking laws.
 " J. C. McLeod; violation of banking laws.
 " J. C. McLeod; violation of banking laws.
 " J. C. McLeod; violation of banking laws.
 " G. E. Spires; violation of banking laws.
 " G. E. Spires; violation of banking laws.
 " J. C. McLeod; embezzlement.

SUMMARY

Murder cases, 10; rape, 2; robbery, 5; embezzlement, 10; breaking and entering with intent to commit a felony, 14; grand larceny, 4; assault with intent to commit murder, 7; forgery, 14; all other cases being felonies, 47. Total, 113.

The above report represents cases only where indictments were actually

returned and filed and indictments are returned in this circuit in about or less than 50 percent of the investigations.

MILLARD B. SMITH,

State's Attorney 23rd Judicial Circuit, Brevard County, Fla.

REPORT OF E. C. MAY, STATE ATTORNEY FOR TWENTY-FOURTH
JUDICIAL CIRCUIT OF FLORIDA FOR 1927-28

February 2, 1929.

Hon. Fred H. Davis, Attorney General,
Tallahassee, Fla.

Dear Sir:—In compliance with your request, I submit herewith my report of cases handled under the various designations from the time of my appointment in July, 1927, until February 1, 1929, all in the Twenty-fourth circuit.

Murder, 7; robbery, 15; miscellaneous felonies, 57.

Under the charges of murder, one case of manslaughter is included.

In the robbery cases are included cases of burglary.

In miscellaneous felonies are included such cases as grand larceny, assault to murder, aggravated assault, theft of automobiles, etc.

Very truly yours,

E. C. MAY,

State Attorney, Twenty-fourth Circuit.

REPORT OF STATE ATTORNEY JULIAN C. CALHOUN FOR TWENTY-
FIFTH JUDICIAL CIRCUIT OF FLORIDA

PUTNAM COUNTY

SPRING TERM, 1927.

Nathan Lavine and Mondell Beach; larceny.

George Shipman; murder in the first degree.

S. J. Brown, George W. Brown, Herbert Brown, Tom Brown; larceny of log of less value than one hundred dollars.

Bisbee White; assault with intent to commit murder.

Doctor DuBose; forgery and uttering forgery.

Theodore Roosevelt; shooting into a railroad car.

Alf Hagan; larceny of hogs.

Bert Butler and Eunice Stanley; living in open state of adultery.

Frank Robinson; larceny of automobile.

A. L. Strickland; incest.

Albert Brown; assault with intent to commit murder.

Frank Robinson; assault with intent to commit murder.

Willie Tomlin; breaking and entering.

Willie Taylor; breaking and entering.

G. S. Willis; forgery and uttering forgery.

Amos Peacock; manslaughter.

A. E. Green; forgery and uttering forgery.

Eugene Garver and Virginia Bess; murder in the first degree.

Eugene Garvin and Virginia Bess; murder in the first degree.

Theodore Roosevelt Cohen; shooting into railroad car.

S. L. Rickles; larceny and embezzlement.

Charlie Davis; breaking and entering.

FALL TERM, 1927.

Jesse Mitchell; assault with intent to murder.

Minnie Pinckney; grand larceny.

Walter Clay; breaking and entering.

Howard Jones, Roy Jenkerson; larceny.

J. B. Burnett; forgery.

Uriah Copeland; forgery.

Lawton V. Spires; desertion, non-support.

Otis Cary, Alphonzo Alexander; breaking and entering.

William Lewis, George Lewis; larceny of automobile.

Paul Gray; forgery.

George E. Conway; embezzlement.

S. R. Palmore, Robert Palmore; breaking and entering.

George E. Conway; embezzlement.

S. G. Lewis; manslaughter.

Jack Berry, James Teasley; assault with intent to commit murder.

Joe Lockett; robbery.

J. C. Wainwright; offering for sale stock of Domestic Investment Corporation without permit.

Walter Clay; breaking and entering.

Walter Clay; breaking and entering.

B. A. Williams; removing personal property from county, same being under conditional sale contract.

J. C. Wainwright; being stock agent of corporation without registering with Comptroller.

Jack Berry, James Teasley; assault with intent to commit murder.

Jack Berry, James Teasley, James Holsey; robbery.

Bruce Gray, Lofton Davis and E. L. Kirkland; grand larceny.

Albert Haynes; perjury.

Richard Fields; perjury.

Jesse Mitchell; perjury.

SPRING TERM, 1928.

Charles W. Arnold, alias F. A. Richardson; false imprisonment and kidnapping.

Charles W. Arnold, alias F. A. Richardson; mayhem No. 1.

Charles W. Arnold, alias F. A. Richardson; mayhem No. 2.

Jimmie Maynor; assault with intent to murder.

Jacob Morgan; murder in the first degree.

Hilton Watson; forgery.

Charlie Harrell, alias Johnson Jones; forgery and uttering forgery.

Lucius Curly; murder in the first degree.

Walter Gordon, alias W. Gordon; obtaining goods by false pretenses.

John Green and James Williams; breaking and entering.

John Holmes; murder.

John Blockman; breaking and entering.

W. L. Stanley; embezzlement.

Crawford Stewart; grand larceny.

J. C. Stafford; breaking and entering.

Nicholas Jones; forgery and uttering a forgery.

Grover Newhalfen; breaking and entering.

Elnora Ralls; grand larceny.

George Smith and Ted Wilkinson; robbery.

Mills K. Armstrong; bigamous cohabitation.

Fred Sykes; desertion and non-support.

Walter Whitehead; assault with intent to murder.

John Hosendorf; breaking and entering with intent to commit a misdemeanor.

Jim Pinner; aggravated assault.

FALL TERM, 1928.

Columbus Williams; desertion, non-support.

Ed Williams; breaking and entering.

Ira W. Clay; larceny of heifer.

James Frimsley and Freddie Rogers; breaking and entering.

Leroy Shelton, alias Eddie Thomas; forgery and uttering forgery.

John W. Tallant; murder in the first degree.

A. M. McClellan; sending threatening letter.

James Holmes; breaking and entering.

Robert White; breaking and entering.

John Lewis and Tobe Williams; larceny of automobile.

Charlie Sims; buying stolen property.

Sylvester Colley; grand larceny.

C. A. LeHardy; assault with intent to carnally know and abuse a female child under ten years of age.

C. A. LeHardy; assault with intent to carnally know and abuse a female child under ten years of age.

Frank Jackson; murder in the first degree.

Henry Cowart; carnally knowing and abusing female under ten years of age.

John McEllison; breaking and entering.

Ed Anderson; breaking and entering.

W. M. Pool; disposing of goods and chattels subject to mortgage.

W. M. Pool; mortgaging property subject to prior lien.

A. O. Pearce; removing property from county under lien.

A. O. Pearce; defrauding.

Eli J. Bohannon; embezzlement.

Eli J. Bohannon; fraud.

Eli J. Bohannon; embezzlement, etc.

Eli J. Bohannon; embezzlement, etc.

Eli J. Bohannon; embezzlement, etc.

A. O. Pearce; defrauding.

FLAGLER COUNTY

SPRING TERM, 1927.

Robert Frank, murder in the first degree; 20 years in State prison.

Lucius Lamb, breaking and entering; two years in State prison.

James Freeman, grand larceny; two years in State prison.

Elma Cowart, assault with intent to murder; case continued for term.

Defendant permitted to go on own recognizance (with bond) with such.

Garfield Sutton, assault with intent to murder; three years in State prison.

William Norman, assault with intent to murder; five years in State prison.

Clarence Ford, larceny of automobile; not guilty.

George W. Cooley, assault with intent to murder; case continued for term, \$500.00 bond.

FALL TERM, 1927.

George W. Cooley, assault with intent to murder; upon motion of State attorney, nolle prosequi entered.

Elma Cowart, assault with intent to murder; upon motion of State attorney, nolle prosequi entered.

Lafayette Wynn, murder in first degree; case continued for term.

Lonnie Anderson, assault with intent to murder; sentenced to reform school until 21; alternative, five years in State prison.

Will Smith, manslaughter; sentenced to one year county jail.

Henry Jay, breaking and entering in day time with intent to commit a misdemeanor; sentenced to two years State penitentiary.

Joseph Furlan, Province Briganti, Louis Chirco, Renald Pessani, breaking and entering; each defendant sentenced to three years in State prison.

Joseph Furlan, Province Briganti, Louis Chirco, Renald Pessani, breaking and entering; case continued for term upon motion of State attorney.

Joseph Furlan, Province Briganti, Louis Chirco, Renald Passani, breaking and entering; case continued for term upon motion of State attorney.

Joseph Furlan, Province Briganti, Louis Chirco, Renald Passani, breaking and entering; case continued for term upon motion of State attorney.

SPRING TERM, 1928.

Lafayette Wynn, murder in first degree; sentenced to life imprisonment in State penitentiary.

James Williams, breaking and entering; sentenced to three years in State penitentiary.

Robert W. Arnold, bigamy.

Will Arnold, alias Robert W. Arnold, bigamy; sentenced to one year.

FALL TERM, 1928.

George York, Delbert Maddox, breaking and entering; capias ordered issued; bond fixed at \$1,000.00 each.

Julius Gibson, Gus Williams, assault with intent to murder; each sentenced to five years in State penitentiary.

C. B. Hudson, assault with intent to murder; sentenced to five years in State penitentiary.

C. B. Hudson, breaking and entering.

Louis Stuckey, alias Louie Stuckey, larceny of automobile; capias ordered issued; bond fixed at \$500.00.

ST. JOHNS COUNTY

SPRING TERM, 1927.

R. E. Lee, arson; May 21, 1926; acquitted June 28, 1927.

John Hicks, arson; 1927; plead guilty June 25, 1927.

George Wilson, alias Frog Wilson; forgery and uttering forgery; Dec. 21, 1925; plead guilty to forgery June 25, 1927.

Eugene Lee, robbery; March 7, 1927; plead guilty June 21, 1927.

Abe Martin, assault with intent to murder, February 12, 1927; nolle prosequi entered June 18, 1927.

Bert Ross, larceny automobile, February 3, 1927; bond estreated June 25, 1927.

Julious Johnson, manslaughter, January 30, 1927; plead not guilty; acquitted June 21, 1927.

H. A. Harrell, James Kane, Wesley Cothron, injuring public building, January 24, 1927; H. A. Harrell plead guilty, June 20, 1927; nolle prosequi entered as to James Kane, Wesley Cothron, June 22, 1927.

H. A. Harrell, James Kane, Wesley Cothron, larceny of automobile, January 24, 1927; plead not guilty; Wesley Cothron acquitted; nolle prosequi entered as to H. A. Harrell and James Kane.

Henry Richardson, larceny of automobile, January 18, 1927; plead not guilty; convicted June 24, 1927.

E. A. Beaty, murder, December 25, 1926; nolle prosequi entered June 18, 1927.

James Kane, breaking and entering, December 25, 1926; plead guilty June 20, 1927.

Joseph Moore, breaking and entering a storehouse March 13, 1927; plead guilty June 24, 1927.

E. A. Beaty, murder in the first degree, December 25, 1926; plead not guilty; convicted June 23, 1927.

Aaron Anderson, shooting into dwelling, December 6, 1926; plead guilty June 20, 1927.

Will Scott, murder in the first degree, February 20, 1927; plead not guilty; convicted June 21, 1927.

George W. Taylor, mayhem, May 5, 1927; plead not guilty; acquitted June 20, 1927.

Katie White, murder in the first degree, March 6, 1927; plead guilty to manslaughter June 22, 1927.

Charlie Stratton, aggravated assault, May 27, 1927; plead guilty June 25, 1927.

L. H. Goode, secreting with intent to embezzle, May 24, 1927; plead guilty June 20, 1927.

Taff Hooper, robbery, May 22, 1927; plead not guilty; convicted June 24, 1927.

Johnnie Johnson, larceny of automobile, March 29, 1927; plead not guilty; convicted June 25, 1927.

Aaron Anderson, breaking and entering, December 6, 1926; nolle prosequi entered June 20, 1927.

Blanche D. Page, removing personal property under lien from limits of county, June 16, 1927; nolle prosequi entered June 22, 1927.

Monroe Wilson, larceny automobile, February 9, 1927; plead not guilty; convicted June 27, 1927.

Roy Johnson, grand larceny, February 17, 1927; bond estreated and judgment entered June 18, 1927.

Jennings W. Hare, Felix W. Hare, Charlie Black, breaking and entering with intent to commit a felony, May 8, 1927; defendants Felix W. Hare and Charlie Black plead not guilty; tried and acquitted June 24, 1927.

Abe Martin, assault with intent to murder, February 12, 1927; plead not guilty; tried and acquitted June 22, 1927.

FALL TERM, 1927.

William Rowe (transferred from Nassau county in 1925), murder in the first degree, August 10, 1922; nolle prosequi entered November 23, 1927. (Defendants plead not guilty.)

Allen Rowe and William Rowe, murder in the first degree, August 10, 1922; defendants plead not guilty; nolle prosequi entered November 11, 1927.

Gilbert Scurry, murder in the first degree, June 22, 1926; nolle prosequi entered November 17, 1927.

Charlie Rice, shooting into dwelling, October 3, 1927; convicted November 18, 1927.

John Davis, alias James Jones, forgery, November 5, 1927; plead guilty November 17, 1927.

J. F. Graham, forgery, September 14, 1927; plead guilty November 17, 1927.

Ross Angel, Irwin Warren, George Williams, robbery, November 4, 1927; plead not guilty; convicted November 18, 1927.

L. C. Nunnerly and W. D. Allen, injuring public building, November 12, 1927; plead guilty November 23, 1927.

Morris Geter, assault with intent to murder, October 31, 1927; plead guilty November 17, 1927.

Reginold Blackwelder, Joseph Eagle and James Henderson, breaking and entering August 21, 1927; Reginold Blackwelder and Joseph Eagle plead not guilty; tried and convicted November 23, 1927.

William H. Best, assault with intent to murder, July 2, 1927; plead not guilty; convicted of assault with intent to commit manslaughter November 19, 1927.

George Wilson, murder in the first degree, June 27, 1927; plead not guilty; acquitted November 22, 1927.

Henry Williams, murder in the first degree, October 2, 1927; plead guilty to manslaughter November 21, 1927.

Fred Murry, receiving stolen goods, September 26, 1927; plead not guilty; convicted November 18, 1927.

L. C. Barber, forging endorsements, November 7, 1927; plead not guilty; acquitted November 17, 1927.

Gilbert Scurry, murder in the first degree, June 22, 1926; plead not guilty; convicted of manslaughter November 17, 1927.

B. D. Irwin, grand larceny, September 26, 1927; plead guilty November 18, 1927.

Oliver Turner, murder in the first degree, June 26, 1927; plead guilty to murder in second degree November 21, 1927.

SPRING TERM, 1928.

Reginold Blackwelder, Joseph Eagle and James Henderson, March 7, 1927. James Henderson plead not guilty; convicted June 13, 1928. (Motion for new trial granted.)

Jose Sanabria, forging check, March 7, 1927; plead not guilty; acquitted June 15, 1928.

Ed Rushing, robbery, February 4, 1928; plead not guilty; convicted June 11, 1928.

James Williams, forgery and uttering forgery, September 21, 1928; nolle prosequi entered June 8, 1928.

Fred Rivers, murder in the first degree, March 4, 1928; plead not guilty; acquitted June 13, 1928.

Milton Williams, desertion and non-support, July 16, 1927; not guilty; placed under bond to pay wife allowance June 11, 1928.

Signor Carlberg, alias J. C. Cruger, alias S. Kalino, uttering forgery, February 14, 1928; plead not guilty; nolle prosequi entered June 15, 1928.

James T. Edmondson, alias J. C. Pullen, uttering forgery, February 14, 1928; plead guilty June 8, 1928.

T. B. Martin, alias T. J. Daniels, forgery and uttering forgery, February 14, 1928; plead not guilty; convicted June 15, 1928.

Herman Stevens and Murlen Stevens, larceny of calf, March 3, 1928; plead not guilty; acquitted June 14, 1928.

Quitman T. Lollar, alias J. E. Davis, forgery and uttering forgery, March 10, 1928; plead guilty to uttering forgery, not guilty to first count; nolle prosequi entered as to first count, June 8, 1928.

French Harmon, Oris Denmark, Herman Peters and John Hicks, breaking and entering May 5, 1928; nolle prosequi entered June 13, 1928.

Quitman T. Lollar, alias J. S. Miller, forgery and uttering forgery, March 9, 1928; plead not guilty as to first county and guilty as to second count; nolle prosequi entered as to first count, June 8, 1928.

French Harmon, Oris Denmark, Herman Peters and John Hicks, breaking and entering, May 6, 1928; French Harmon, Oris Denmark, Herman Peters, plead guilty; nolle prosequi entered as to John Hicks, June 13, 1928.

Joe Holmes, breaking and entering November 3, 1927; plead guilty June 13, 1928.

Samuel Orr, assault with intent to murder, January 15, 1928; plead not guilty; convicted June 13, 1928.

Will Reid, breaking and entering, June 19, 1927; plead guilty June 8, 1928.

Thomas James, murder in the first degree, January 2, 1928; plead not guilty; convicted June 12, 1928.

Wilson Kearns, assault with intent to murder, May 16, 1928. Plead not guilty; convicted June 16, 1928.

Robert Corum, Charles Krause, breaking and entering, 1928; plead guilty June 14, 1928.

James Williams, forgery and uttering forgery, September 21, 1927; plead not guilty; convicted of uttering forgery June 13, 1928.

Olin Williams and Hart McNair, aiding prisoner to escape, July 25, 1924; Olin Williams plead not guilty; acquitted June 11, 1928.

Olin Williams and Hart T. Fleming, aiding prisoner to escape, July 25, 1924; Olin Williams plead not guilty; nolle prosequi entered June 11, 1928.

FALL TERM, 1928.

Reginold Blackwelder, Joseph Eagle and James Henderson, breaking and entering, August 21, 1927; nolle prosequi entered as to James Henderson. November 15, 1928.

Dowell A. Ray, embezzlement, November 30, 1927; plead guilty November 15, 1928.

Dowell A. Ray, embezzlement, November 30, 1927; plead guilty November 15, 1928.

Dowell A. Ray, embezzlement, November 30, 1927; plead guilty November 15, 1928.

F. H. Genung, practicing dentistry without first obtaining certificate, March 28, 1928; plead not guilty; convicted November 21, 1928.

Benjamin Williams, Charles Brooks, breaking and entering, August 22, 1928; defendants plead not guilty; convicted November 20, 1928.

James Holmes, grand larceny, June 16, 1928; plead not guilty; acquitted November 16, 1928.

Bernard G. King, assault with intent to carnally know female person under 18 years of age; plead not guilty; acquitted November 20, 1928.

James Moss, receiving stolen property, October 20, 1928; plead not guilty; nolle prosequi entered November 19, 1928.

C. J. Duckett and Frank Anderson, grand larceny, October 20, 1928; plead guilty November 15, 1928. *

J. H. Maudlin, obtaining money under false pretense, June 6, 1928; plead guilty November 16, 1928.

Dave Crawford, breaking and entering, July 3, 1928; plead not guilty; acquitted November 20, 1928.

G. H. Higginbotham, incest, June 22, 1928; plead not guilty; convicted November 19, 1928.

G. C. Morgan, fraudulent conversion, December 25, 1927; plead not guilty; acquitted November 20, 1928.

Owen Holmes, aggravated assault, July 4, 1928; plead not guilty; convicted November 16, 1928.

REPORT OF H. V. KNIGHT, STATE ATTORNEY FOR TWENTY-SIXTH JUDICIAL CIRCUIT

CRIMINAL CASES IN CIRCUIT COURT, BRADFORD COUNTY, FLA.

SPRING TERM, 1927.

<i>Minor Felonies, Etc.</i>		<i>Major Felonies.</i>	
Investigated	13	Murder	2
Indicted	9	Rape	2
Continued from previous term	0	Rape	2
Not guilty	3		
Nolle prossed	7	Rape	1
		Murder	1
Continued	1	Rape	1
Total sentences, 5 years.			

NOTE: Defendant in rape case was released and discharged on writ of habeas corpus before the next term of court.

FALL TERM, 1927.

Investigated	27	Murder	3
Indicted	8	Murder	2
Continued from previous term	1		
Not guilty	1		
Convicted	2		
Total sentences, 1 year, 9 months.			
Continued	3	Murder	2
Nolle prossed	3		

SPECIAL TERM, 1927.

No grand jury. Tried one murder case; verdict, manslaughter. Total sentences, 10 years. All other cases continued.

SPRING TERM, 1928.

Investigated	23	Murder	1
Indicted	17		
Continued from previous term	3		
Not guilty	5	Murder	1
Convicted	8		
Nolle prossed	1		
Continued	7		

Total sentence, 8 years, 6 months.

FALL TERM, 1928.

Investigated	13		
Indicted	7		
Continued from previous term	7		
Convicted	4		
Total sentences, 2 years, 6 months (One defendant not sentenced).			
Not guilty	3		
Nolle prossed	1		
Indictment quashed	1		
Continued	4		
Bond estreated	1		

CRIMINAL CASES IN CIRCUIT COURT, UNION COUNTY, FLA.
YEARS 1927 AND 1928.

SPRING TERM, 1927.

*Minor Felonies, Etc.**Major Felonies.*

Investigated by grand jury	7		
Indicted	4		
No bills	3		
Continued from previous term	1	Murder	1
Convicted	3		
Continued	2	Continued	1

Total sentences, three years.

FALL TERM, 1927.

Investigated by grand jury	11	Investigated by grand jury	2
Indicted	8	Murder	2
Continued from previous terms	2	Murder	1
Convicted	4	Manslaughter	1
Continued	5	Continued	2
Nolle prossed	1		

Total sentences, 23 years.

SPRING TERM, 1928.

Investigated by grand jury	8	Murder	2
Indicted	5	Murder	1
Continued from previous terms	5	Murder	2
Convicted	5	Manslaughter	1
Not guilty	1		
Nolle prossed	2		
Continued	2	Murder	2

FALL TERM, 1928.

Investigated by grand jury	12		
Indicted	8		
Continued from previous term	2	Continued from previous term	2
Convicted	4	Murder	1
Not guilty	*1	Nolle prossed	1
Nolle prossed	3		
Continued	2		

Total sentences, 4 years, 3 months.

* Due to severances, each defendant is listed as separate case.

CRIMINAL CASES IN CIRCUIT COURT, BAKER COUNTY, FLA.
YEARS 1927 AND 1928.

SPRING TERM, 1927.

*Minor Felonies, Etc.**Major Felonies.*

Indictments	11	Robbery	4
Convicted	2		
Nolle prossed	7		
Continued	8		

Total sentences, 27 years.

SPECIAL TERM, 1927.

Investigated by grand jury	5	Investigated by grand jury	8
Indicted	4	Murder	5
Continued from previous term	8		
Convicted	5	Murder	2

Total sentences, two death (ending two other murder cases); two years, six months.

Nolle prossed	3	Robbery	4
		Continued	1

FALL TERM, 1927.

Investigated by grand jury	6	Robbery	1
Indicted	4		
		Continued from previous term	1
Convicted	2	Convicted	1
Instructed verdicts	2		

Total sentences 7 years. (Sentences on two defendants deferred.)

SPRING TERM, 1928.

Investigated by grand jury	12	Investigated by grand jury	6
Indicted	12	Rape	4
		Murder	2
Convicted	10	Convicted	1
Continued	2		

Defendants not in custody

Total sentences, 2 life sentences; 33 years.

FALL TERM, 1928.

Investigated and indicted	2		
Continued from last term	2	Rape	3

Convicted	2	Convicted	3
Nolle prossed	1		
Continued	1		

Total sentences, 3 life, one year, six months.

NOTE: Due to severances, each defendant is listed as separate case.

REPORT OF STATE ATTORNEY C. RAY SMITH FOR TWENTY-SEVENTH JUDICIAL CIRCUIT OF FLORIDA

True Bills—False pretense, 4; conspiracy, 1; murder, 3; larceny, 10; breaking and entering, 15; receiving stolen property, 2; forgery, 2; embezzlement, 13; altering marks and brands, 1; false entry, 1; attempt to rape, 2; bigamy, 1; arson, 2; robbery, 3; desertion, 2; carnal intercourse, 1; speculation by public officer, 1; incest, 2; assault with intent to murder, 5. Total, 71.

No Bills—Total, 14.

REPORT OF C. R. MATHIS, STATE ATTORNEY FOR TWENTY-EIGHTH JUDICIAL CIRCUIT OF FLORIDA, FOR 1927-28.

Panama City, Fla., February 6, 1929.

Hon. Fred H. Davis, Tallahassee, Fla.

Dear Davis:—Pursuant to request contained in your letter of January 1st, for a report upon the number of cases handled by the State Attorney in Bay county, now the Twenty-eighth Judicial Circuit, during the years 1927 and 1928, I beg to submit the following report:

Murder, 7 cases; rape, 1 case; robbery, 1 case; burglary, 16 cases; forgery, 6 cases; withholding the means of support, 13 cases; larceny, 15 cases; manslaughter, 3 cases; perjury, 2 cases; assault with intent to murder, 8 cases; assault with intent to rape, 1 case; embezzlement, 7 cases; incest, 2 cases; bigamy, 1 case; other felonies, such as shooting into dwelling house, selling mortgaged property, etc., 15 cases; miscellaneous high misdemeanors, 17 cases. Of these cases 14 have not been disposed of for the reason that a few of them are continued on the docket and the other defendants have not been apprehended.

This does not include a good number of independent investigations made by me into violations where no prosecutions were filed for lack of sufficient evidence.

C. R. MATHIS.

REPORT OF COUNTY SOLICITORS FOR CRIMINAL COURTS OF RECORD

RECAPITULATION OF CASES HANDLED BY DUVAL COUNTY CRIMINAL COURT, JACKSONVILLE, FLA.

CLASSIFICATION	1925	1926	1927	1928
<i>Misdemeanors</i>				
Pleas	561	704	493	522
Nolle prossed	206	195	164	178
Jury convictions	37	45	41	49
Jury acquittals	38	33	29	27
No bills	11	14	13	17
Estreatures	119	140	79	122
Mistrials	2	1	3	2
<i>Felonies</i>				
Pleas	171	176	123	137
Nolle prossed	157	165	142	151
Jury convictions	53	60	59	61
Jury acquittals	42	47	32	38
Mistrials	4	3	2	2
Estreatures	22	28	24	29
No bills	4	2	5	3
Totals	1,427	1,613	1,209	1,338

Respectfully submitted,

D. W. PARFITT,

Clerk Criminal and Civil Courts, Duval County, Florida.

REPORT OF J. F. BUSTO, COUNTY SOLICITOR FOR THE CRIMINAL COURT OF RECORD FOR MONROE COUNTY, FLORIDA, OF MIS- DEMEANORS AND FELONIES HANDLED AND DISPOSED OF DUR- ING THE YEARS 1927 AND 1928, INCLUSIVE.

JANUARY TERM, 1927.

Misdemeanors, 26. Felonies—Perjury, 1; assault with intent to murder, 4; robbery, 3. Total, 8.

MARCH TERM, 1927.

Misdemeanors, 33. Felonies—Non-support wife, 1; robbery, 3; grand larceny, 1; assault with intent to murder, 1. Total, 6.

MAY TERM, 1927.

Misdemeanors, 20. Felonies—Non-support wife, 6; manslaughter, 2; embezzlement, 2; bigamy, 1. Total, 11.

JULY TERM, 1927.

Misdemeanors, 21. Felonies—Forgery, 1; non-support wife, 3; grand larceny, 2; obtaining money under false pretenses, 1; robbery, 1; attempt to rape, 1. Total, 9.

SEPTEMBER TERM, 1927.

Misdemeanors, 17. Felonies—Non-support wife, 4

NOVEMBER TERM, 1927.

Misdemeanors, 7. Felonies—Embezzlement, 2; murder second degree, 1; non-support wife, 2; robbery, 3; attempt to murder, 1. Total, 9.

JANUARY TERM, 1928.

Misdemeanors, 8. Felonies—Assault with intent to murder, 1; grand larceny, 2; non-support wife, 1; robbery, 2. Total, 6.

MARCH TERM, 1928.

Misdemeanors, 14. Felonies—Assault with intent to murder, 2; grand larceny, 2. Total, 4.

MAY TERM, 1928.

Misdemeanors, 12. Felonies—Robbery, 6; non-support wife, 1. Total, 7.

JULY TERM, 1928.

Misdemeanors, 7. Felonies—Grand larceny, 4; attempt to rape, 1; non-support wife, 3; assault with intent to murder, 2; assault with intent to rob, 2; embezzlement by municipal officer, 1; embezzlement by lodge officer, 1. Total, 14.

SEPTEMBER TERM, 1928.

Misdemeanors, 20. Felonies—Grand larceny, 11; robbery, 1; false pretenses, 1. Total, 13.

NOVEMBER TERM, 1928.

Misdemeanors, 15. Felonies—Obtaining money under false pretenses, 2; assault with intent to murder, 1; non-support of wife, 1; robbery, 3; grand larceny, 1. Total, 8.

Total misdemeanors, 200; total felonies, 99; grand total for years 1927 and 1928, 299.

NOTE: The above report does not include misdemeanors or felonies dismissed by the lower courts or nolle prossed by the county solicitor.

The misdemeanors reported include violations of the prohibition laws, assault and battery, gambling, drunkenness, obscene language, aggravated assault, violations of the license laws, reckless driving, etc.

Also the above report does not include murder cases and other capital offenses over which the Criminal Court has no jurisdiction.

REPORT OF R. E. L. CHANCEY

Tampa, Fla., February 6, 1929.

Hon. Fred Davis, Attorney General,
Tallahassee, Fla.

My Dear Mr. Davis:—My records as county solicitor show that for the year 1927 there were 464 felony prosecutions in the Criminal Court of Record and 856 misdemeanor prosecutions in the Criminal Court of Record and for the year 1928 there were 450 felony prosecutions in the Criminal Court of Record and 943 misdemeanor prosecutions in the Criminal Court of Record and the Court of Crimes.

Sincerely yours,

R. E. L. CHANCEY, County Solicitor.

REPORT OF J. H. PETERSON

February 7th, 1929.

Hon. Fred H. Davis, Attorney General,
Tallahassee, Fla.

Dear Sir:—Your letter of January 25th, requesting a report of felonies and misdemeanors handled by me during the years 1927 and 1928, received and I beg to report as follows:

Month—	1927	
	Felonies	Misdemeanors
January	14	145
February	16	164
March	9	164
April	15	128
May	23	83
June	3	81
July	8	105
August	2	72
September	14	90
October	8	49
November	2	100
December	2	58
Total	116	1,239

Month—	1928	
	Felonies	Misdemeanors
January	3	93
February	8	80
March	8	90
April	6	90
May	19	88
June	5	37
July	21	82
August	1	29
September	34	72
October	13	55
November	10	57
December	4	53
Total	132	826

The above figures represent only actual convictions, including pleas of guilty. The clerk was to furnish me with a list of acquittals but has failed to do so.

Yours very truly,

J. H. PETERSON, County Solicitor.

XI.

OFFICIAL OPINIONS

The following are some of the opinions rendered by this office to the Governor and his cabinet during the years 1927-1928 which may be of interest to the public generally:

GOVERNOR.

HIGHWAYS—OPENING NEW—PROCEDURE.

February 14, 1927.

My Dear Governor:

This acknowledges the submission to me of the files and correspondence with reference to the changing of Ocean Boulevard in Palm Beach County, Florida.

I note the letter of Mr. Frank Wideman to you under date of January 25th. I note also the letter of Mr. Rufus M. Robbins, county attorney, to you under date of February 1. I also note certified copy of extracts from the minutes of the Board of County Commissioners touching the procedure had in the matter of this Ocean Boulevard and the changing of the location of the same through Boynton, Florida.

You will appreciate the fact that I am very reluctant to express any opinion in this matter. An opinion from me will not be binding on anyone or on any court.

I note in the third paragraph of Mr. Robbins' letter that he says:

It seems that no evidence of the posting of any notice was ever filed, and it may be presumed that the notice was not posted. It has been suggested that the purpose of the notice is only to secure the right of way for the new road in a manner to do away with the necessity for procuring right of ways deeds or condemning the right of way and that this is the only purpose of the notice. The County Commissioners would like to be advised if the Attorney General's opinion as to the necessity as to the notice where the right of way had been perviously acquired.

It is my opinion that this notice should have been given in any event. The provision of Section 1593 of the Revised General Statutes on this point is as follows:

After the route is marked out and their report is accepted by the County Commissioners, the County Commissioners shall make an order for the opening of said new road or changed road after giving thirty days' notice thereof, by posting at the courthouse and some public place nearest the road sought to be changed or established;

* * *

You will note the language of the above provision. It says "* * * the County Commissioners shall make an order for the opening of said new road or changed road after giving thirty days' notice thereof * * *."

With this provision, I am forced to the conclusion that for this procedure to have been regular a thirty-day notice should have been given.

When I rendered an opinion in this matter before I declined to give an opinion as to the constitutionality of Chapter 10999, Special Laws of Florida, Acts of 1925. I am still reluctant to give an opinion on the con-

stitutionality of this chapter but in order to make my position clear I will do so.

It is my opinion that Chapter 10999 above cited is unconstitutional for this reason:

Section 20 of Article III of the Constitution provides:

The Legislature shall not pass any special or local laws in any of the following enumerated cases: that is to say, * * * vacating roads; * * *

Section 21 of Article III provides:

In all cases enumerated in the preceding section all laws shall be general and of uniform operation throughout the State * * *

Section 24 of Article III of the Constitution provides:

The Legislature shall establish a uniform system of county and municipal government, which shall be applicable, except in cases where local or special laws are provided by the Legislature that may be inconsistent therewith.

You will note that under the provisions of Chapter 10999 there is a special procedure provided whereby roads could be vacated in Palm Beach County, Florida. If a law of this kind could be constitutional it is my opinion it would have to apply to every county in the State alike.

It is my opinion that the Legislature could pass a special or local law governing the establishment of new roads but when it comes to the question of vacating an established road, then under the provisions of the Constitution the procedure governing will have to be general and uniform throughout the State.

Another feature of Chapter 10999 that appears to me to be unconstitutional is the provision in Section 3 covering the punishment for a violation of the provisions of said chapter. It provides that:

Any member or members of any board or body causing or permitting the change in locating or the abandonment of any road or portion thereof embraced within the terms of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$100 and imprisoned in the county jail for not more than sixty days.

To have made this provision for the punishment constitutional it should have declared such acts to be a misdemeanor and punished as provided by law.

Section 20 of Article III of the Constitution provides that no special or local laws shall be passed providing punishment of crime and misdemeanors.

It seems to me that the only proper course to be pursued to have this matter definitely settled would be for parties interested to bring an injunction proceeding, praying that the Board of County Commissioners be enjoined from vacating the Ocean Boulevard road as contemplated in the order of the board. By this procedure they could have the constitutionality of Chapter 10999 tested and established by the courts.

I regret exceedingly that this situation has arisen in Palm Beach county and I am very reluctant to express any opinion with reference to conditions concerning the same.

Hoping that this will be of some assistance to you and to those interested, I am,

Most sincerely,

J. B. JOHNSON, Attorney General.

JUSTICE OF PEACE DISTRICT—ABOLITION BY COUNTY COMMISSIONERS.

March 23, 1927.

My Dear Governor:

I am in receipt of your favor of the 21st inst., with copy of resolution by the Board of County Commissioners of Seminole county, abolishing a Justice of the Peace District.

Under the provisions of Section 3359, Revised General Statutes, the County Commissioners have the authority to enlarge or change boundaries of districts.

Under Section 3360, Revised General Statutes, the Board of County Commissioners has authority to make new districts, alter the boundaries of districts and abolish districts. This Section 3360 reads:

If any new districts be made, so that the boundaries of a district or districts existing at the time shall be abolished, or if any district shall be abolished, the County Commissioners, at the time of such abolition or obliteration, shall designate the district in which shall preside the justice who shall be successor to the justice presiding in the obliterated or abolished district or districts.

You will see that under the provisions of this statute justice districts can be abolished by the Board of County Commissioners.

Respectfully,

J. B. JOHNSON, Attorney General.

ELECTROCUTION—DUTIES OF EXECUTIONER, ETC.

June 11, 1927.

My Dear Governor:

I beg to acknowledge the receipt of your letter of June 9th, transmitting letter of Mr. J. S. Blich, superintendent of the Florida State Farm at Raiford, dated March 31st, and in reply to your request to be advised as to whose duty it is to electrocute those who are sentenced to death in the electric chair, I beg to submit the following as my opinion:

The execution of prisoners in the electric chair is governed by Chapter 9169 of the laws of 1923, which was approved May 7th, 1923, and became effective January 1st, 1924. This bill was drawn by me while I was a member of the Legislature from Leon county, and in preparing the bill I did not follow the statutes of any other State in detail but did draw the act with reference to the electrocution laws prevailing in North Carolina and in New York state.

Section 2 of Chapter 9169 provides that the superintendent of the State Prison, or in the case of his death, disability or absence, a deputy shall be executioner.

Section 3 of the act provides that for the purpose of executing sentences of death as provided by law the sheriff of the county wherein the conviction was had shall be *ex officio* deputy executioner of such sentence of death and shall be present at the execution unless he be prevented by sickness or other disability.

A later provision in Section 3 is to the effect that all executions shall be carried out by the executioner, deputy executioner and such deputies, electricians and assistants as he may require to be present to assist.

Construing these provisions, it will be noted that while the superintendent

of the State Prison is made the official executioner, at the same time the sheriff of the county wherein the prisoner was convicted is made *ex officio* deputy executioner and both the executioner and the deputy executioner are required by law to be present at the execution.

Referring to the particular situation presented by the letter of Mr. Blitch, which accompanied your request for my opinion, the controversy seems to resolve itself into a question of the respective functions which the executioner and the deputy executioner should perform in conducting an execution.

It is plainly the duty of Mr. Blitch, as superintendent of the Florida State Farm, in an electrocution under Chapter 9169, to see that the sentence of death is executed in accordance with the law. The very fact that he is executioner and the person in charge implies this beyond question.

It is clearly apparent from the statute that it is the duty of the sheriff of Putnam county, which is the county where the conviction of prisoner Jim Williams was had, should be present at, and assist in, the execution of this prisoner, and in being present and so assisting in the execution of the prisoner the sheriff is acting as *ex officio* deputy executioner under the provisions of Section 6125, Revised General Statutes of Florida, as amended by Chapter 9169 of the Acts of 1923.

While the statute provides that the execution should be under the general control and supervision of the executioner, it is also provided that the executioner may require the presence of his deputy executioner, viz., sheriff, and other deputies as well as assistants and electricians to assist in conducting the electrocution. This is clearly implied from the language of Section 6125, Revised General Statutes, as amended by Chapter 9169, which says that:

* * * All executions shall be carried out by the executioner, deputy executioner and such deputies, electricians and assistants as he (meaning the superintendent of the State Prison, acting as executioner) may require to be present to assist * * *.

It is, therefore, my conclusion from the statute that while the superintendent of the State Prison is the official executioner of condemned prisoners in this State that the sheriff of the county where the conviction was had, being *ex officio* deputy executioner and subject to the orders of his superior officer, viz., the executioner himself, may be required by the executioner to perform such services in connection with each execution as will enable the superintendent of the State Prison, acting as executioner, to fully carry out the duties of electrocuting the condemned prisoner, and in this connection the superintendent of the State Prison would have the right, in my opinion, to order the sheriff, as deputy executioner, to throw the switch on the electric chair, as the means of effecting the carrying out of the particular execution.

If, for any reason, the sheriff of the county wherein the conviction was had is by reason of sickness or other disability prevented from being present and acting as *ex officio* deputy executioner of any sentence of death, it is my opinion that such sheriff should appoint one of his deputies to attend the execution in his stead and act as *ex officio* deputy executioner of the sentence of death in the place and stead of the sheriff, who is prevented by sickness or other disability from performing such duties.

In construing the provisions of the statute to the effect

* * * that all executions shall be carried out by the executioner, deputy executioner and such deputies, electricians and assistants as he may require to be present to assist * * *.

Nothing contained in this opinion is to be considered as meaning that the words "such deputies" occurring after the word "deputy executioner" mean deputy sheriffs. On the contrary, the words "such deputies" mean such deputies as may be appointed by the superintendent of the State Prison to assist him in carrying out the execution.

Trusting that this answers the question submitted, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

JUSTICE OF PEACE DISTRICTS—ABOLITION BY COUNTY COMMISSIONERS DURING TERM OF JUSTICE.

July 1, 1927.

My Dear Governor:

Answering your inquiry of June 30th, I will state that there is no legal authority for a Board of County Commissioners to abolish a Justice of the Peace District during the term of office of an incumbent of that district thereby throwing said incumbent out of office.

The statutes lay down the manner in which Justice of the Peace Districts may be abolished, or annexed to adjoining districts, and these statutes exclude the idea that such Justice of the Peace Districts can be abolished during the term of office of its incumbent.

Yours very truly,

FRED H. DAVIS, Attorney General.

STATE OFFICERS PROHIBITED FROM HOLDING MORE THAN ONE OFFICE.

August 15, 1927.

My Dear Governor:

Section 15 of Article 16 of the Constitution of the State of Florida reads as follows:

Section 15. No person holding or exercising the functions of any office under any office under any foreign government, under the government of the United States, or under any other state, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; provided, notaries public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office.

A deputy sheriff "performs the functions of" the duties of the office of sheriff under authority of law. See Sections 2881 to 2883 of the Revised General Statutes of Florida. As a deputy sheriff such officer has the right to do anything that the sheriff can do except appoint a deputy. See *Guarantee Trust Company vs. Buddington*, 23 Fla., 514.

It, therefore, appears to be plain that it is against the spirit as well as the letter of Section 15 of Article 16 of the Constitution of this State for a duly elected and qualified constable to accept appointment as and perform the duties of deputy sheriff.

In view of the fact that the question of eligibility of the constable which you refer to in your letter to hold his office as constable after having accepted and qualified as a deputy sheriff of the same county, is at issue and presents a legal question which the courts have never passed upon, my suggestion is that the matter presented be referred back to the petitioners with the suggestion that they apply for permission to institute *quo warranto* suit against the deputy sheriff to determine his eligibility to continue to hold his office as constable. I am of the opinion that while the Governor has power to handle such a situation that where rights to hold office are involved and the consideration of these rights involves a legal question that it would probably be better policy to have the courts pass on that question instead of assuming responsibility for deciding the same yourself.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

PHYSICIANS—PRACTICING IN FLORIDA

August 27, 1927.

My Dear Governor:

I beg to acknowledge receipt of your communication of August 26th, enclosing letter of August 5th from Rev. F. J. Clarkson, of Palm Beach, Florida.

The right of physicians to practice medicine in Florida is governed entirely by the provisions of Senate Bill No. 77 passed by the last Legislature and approved May 28th, 1927. This bill requires every doctor to hold a Florida license except those specifically exempted by Section 14 of Chapter 8415, Acts of 1921, as amended.

Among those exempted are medical officers serving in the United States Army, Navy or Public Health Service while so commissioned, or anyone while actually serving without salary or professional fees on the resident medical staff of any legally incorporated hospital, or lawfully qualified physicians in other states or counties meeting legally registered physicians in this State in consultation, etc. There are other exemptions not necessary to be mentioned here.

Experience in Florida in both the medical and legal profession during the past several years has demonstrated that it was not practical to allow transient physicians to come to Florida from other states and practice here without taking the examination prescribed by our local Medical Examining Board. It was found that Florida became the dumping ground for physicians from other states as well as lawyers from other states, who either could not make a living where they were or who were run out of their respective communities for some illegal practice. It was found to be a most difficult task to conduct the necessary investigation of these persons before permitting them to practice in this State. The Legislature in its wisdom, therefore, passed a law requiring all persons who desired to practice medicine or law in Florida, as well as engineers and other professional men, to apply for examination and procure a license from the Florida boards. Experience has shown that this is a most wholesome and salutary law and while it may work hardships in certain instances, such as mentioned by Reverend Clarkson, the good effect far outweighs any evil effect of it.

I am unable to find anything in the laws which would authorize me to interpret them in such a way as to make it legal for outside physicians and

surgeons who are nationally known to practice in the State of Florida without taking an examination. The question of making such exemption was for the Legislature to decide, and the Legislature refused to do that very thing. So far as isolated cases are concerned, you will notice that the law does not apply to these nationally known physicians who may come to Florida for consultation in some particular case or to assist a local physician in some particular case, nor does the law apply to physicians connected with hospitals which physicians receive no fees or salary for their services. If a physician contemplates coming to Florida to serve as resident physician in a hospital here at a salary or upon payment of regular fees, he should apply to the Medical Board for examination and license to practice, and I see of no way in which this can be avoided.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

PRISONER, ESCAPED, MAY BE PROSECUTED FOR MISDEMEANOR.

August 31, 1927.

My Dear Governor:

I wish to acknowledge receipt of your letter of August 11th, enclosing letters from Hon. Nathan Mayo, Commissioner of Agriculture, and Hon. L. N. Tilden, Judge of the Criminal Court of Record of Orange county, with reference to prosecution of prisoners who escape from the county prisons.

Some years ago, while I was county prosecuting attorney of Leon county, I had occasion to make a full investigation of the common law relating to liability of a prisoner to prosecution for making an escape. My investigation confirmed the impression that I had that such was a violation of the common law, and as such, could be prosecuted and punished under the existing laws of this State, even though we have no expressed statute on the subject. While I have not yet had the time to run the case down, I am quite sure there is one case in the Supreme Court reports of this State which touches upon this question and holds at least by way of *obiter dicta* that it is a common law misdemeanor for a prisoner to escape from this State and as such, a prosecution may be had against him for such offense.

Trusting this fully answers the inquiry made by Judge Tilden and also Mr. Mayo, I beg to be

Very respectfully,

FRED H. DAVIS, Attorney General.

**BAIL FOR APPEARANCE OF DEFENDANT SERVED WITH WARRANT
IN ANOTHER COUNTY.**

September 13, 1927.

My Dear Governor:

I have your letter of September 10th enclosing a letter received by you from Hon. C. H. Kennerly, county judge of Putnam county, in which he discusses the question of the allowance and fixing of bail for the appearance of an accused in a criminal case when such accused is arrested on a warrant issued from the County Judge's Court of one county and served outside of this county and in another county. Judge Kennerly makes complaint that the sheriff of Hillsborough county fixed bail for a person arrested on a warrant issued from Putnam county and challenges the right of the sheriff of Hillsborough county so to do.

Your request is for my opinion in reference to who has the right to fix in bail where a defendant is arrested on a warrant in one county, which warrant was issued in another county, and my reply is as follows:

This subject was fully considered by the Supreme Court in a case which I myself brought before the Court to determine this very question. See *ex parte Hatcher*, 86 Fla. 330, 98 So. 72. In that case the Supreme Court held that the constitutional right of an accused to have bail entitled him to give such bail *where arrested* when taken into custody by a sheriff within the State of Florida in another county from that in which the process issued, so it is clear from this opinion that the sheriff from Hillsborough county was required to take bail for Pardo when he arrested him in Hillsborough county on the warrant issued in Putnam county.

Now as to the question as to who should fix the amount of bail. No one except a magistrate or another entitled judicial officer has the right to fix the amount of bail to be taken. Under the statutes, sheriffs are authorized to accept and approve bail bonds and even cash bonds but the amount therefor is exclusively within the province of the judicial officer who has control of the process. See Sections 6037, 6031, 6036, 6046, etc., of Revised General Statutes, 1920.

It is the duty of the county judge, when issuing a warrant for an accused, to indorse upon such warrant the amount of bail to be taken when the accused is arrested, in like manner as circuit judges of Criminal Courts of Record indorse their amount of bail upon *capias* issuing from their courts. This duty is a part of our common law. Frequently, however, county judges issue warrants and do not fix the amount of bail nor indorse the same upon the warrant, and sometimes, also, a warrant of this character is sent by a sheriff to another county and the accused is arrested in such other county on such warrant. The purpose of having a justice of the peace or county judge indorse a warrant before it can be served in any county other than that in which it was issued was to preserve the right of an accused person to give bail when arrested for a bailable offense. If the judge who issued the warrant has already fixed the amount of bail, then the judge who indorses the warrant for service should not attempt to change the amount fixed by the issuing magistrate; but if the magistrate has not fixed the amount of bail, then it is the duty of the judge who indorses the warrant for service to fix the amount of bail for the accused in order that the officer who arrested the accused in the county may be advised as to the amount of bail necessary to release the prisoner.

In these cases, the Constitution of the State of Florida, which guarantees the accused person the right to give bail, is supreme and such right to give bail, guaranteed by the Constitution of the State, as the Supreme Court says, can not be defeated by the mere fact that the accused person is found and arrested in a county different from that in which the offense is alleged to have been committed. In the eyes of the law every man arrested for an offense is an innocent man and he continues an innocent man in the eyes of the law until he is duly convicted of some crime. While it is necessary to arrest individuals and hold them for trial in our courts in order that the courts may be able to enforce their jurisdiction, it should, nevertheless, be remembered that up until the time of conviction the law is presumably deal-

ing with an innocent man and, accordingly, his constitutional rights to give bail should be strictly guarded.

I am of the opinion, therefore, that the sheriff of Hillsborough county not only had the right but it was his duty to take bond for the man who was arrested in that county on a warrant from Putnam county unless a different amount of bond had been fixed and indorsed on the bond by Judge Kennerly. Up until the time of the opinion of the Supreme Court of *ex parte* Hatcher, above referred to, it was the general practice for a sheriff to refuse to take bail bonds for persons arrested by authorities of other counties, but by the result of the decision of that case, this practice has been discontinued and now, as Judge Kennerly says, the practice is just the other way.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

NATIONAL GUARD—PAYMENT

September 24, 1927.

My Dear Governor:

I have before me your letter of September 15th, 1927, in which you enclose a letter from Adjutant General J. Clifford R. Foster, requesting from you instructions as to whether or not Section 4 of House Bill No. 433, approved May 30, 1927, which amends Section 41 of Chapter 8502, Acts of 1921, Laws of Florida, authorizes the payment to members of the Florida National Guard, as well as organizations of the same, the stated allowances of money set forth in said act, without a specific appropriation made by the general appropriation bill being in effect to cover the entire amounts directed to be paid.

In the case of *State vs. Allen*, 91 So. 2d 105, the Supreme Court of Florida, in deciding what was an appropriation of money sufficient to authorize and require its payment according to the Constitution and laws of this State, said:

* * * It is a setting apart of money formally or officially for a special purpose or use (see Funk & Wagnall's Standard Dictionary) and, where that is done by the Legislature in clear and unequivocal terms, it is an appropriation. Statutes setting apart or designating certain public moneys for special governmental purposes have been held to be appropriations notwithstanding the word "appropriation" is not used.

The language of Section 41 of Chapter 8502, as amended by House Bill 433, Acts of 1927, is:

There shall be annually paid to the commanding officer of each brigade or higher unit of command, etc., . . . the following sums for the maintenance of such organizations and for the care of public military property entrusted to their charge, etc.

These payments are required to be paid upon requisition, the statute being mandatory in its language.

To my mind, no clearer setting apart of money formally or officially for a special purpose or use, in clearer or more unequivocal terms, could have been used by the Legislature, and while the word "appropriation" does not occur in the act, I am of the opinion, basing such opinion on the recent holding of the Supreme Court of Florida in the case above referred to, that the

language used is in legal effect an appropriation of the amounts set out in the act annually, and that such amounts should accordingly be paid even though not embraced in the general appropriation bill of 1927.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE PROPERTY—APPOINTMENT OF AGENT AS CARETAKER

September 24, 1927.

My Dear Governor:

I wish to acknowledge receipt of your letter of September 17th with enclosure of letters from Adjutant General J. Clifford R. Foster and Judge Advocate George W. Bassett, Jr., and request for my opinion as to whether or not you are authorized under Section 83 of the Revised General Statutes of Florida to designate a suitable person as agent of the State of Florida for the purpose of protecting the property of the State of Florida located at the State camp grounds known as Camp Johnston, near Jacksonville.

Section 83 of the Revised General Statutes of Florida provides that the Governor is authorized and empowered to employ as many persons as he, in his discretion, may deem necessary to secure the protection to * * * property of the State of Florida.

The military reservation located at Camp Johnston is undoubtedly "property" of the State of Florida which you as Governor have the right to employ a suitable person to protect. In employing such person you will no doubt have to name some person for that purpose who is already provided with compensation from existing appropriations as it appears that no moneys are available to be used for the purpose of carrying out said Section 83 of the Revised General Statutes, unless it be your general contingent fund which is usually taken up with other necessities.

I therefore give it as my opinion that under Section 83 of the Revised General Statutes of the State of Florida you would be authorized and empowered to commission the present superintendent of the State Camp Grounds at Camp Johnston as "State Agent for the Protection of State Property on the State Camp Grounds at Camp Johnston, Florida," such commission to be at the pleasure of the Governor. Such a designation would vest the person designated not with general police power, but with all necessary power to protect and defend the State property from abuse and trespass, even to the extent of forcibly expelling trespassers or forcibly seizing them and turning them over to a proper civil police officer to be proceeded against according to law.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GENERAL REVENUE FUND—TRANSFER OF MONEY TO STATE BOARD OF HEALTH.

September 30, 1927.

My Dear Governor:

I have your letter of September 24th, enclosing a letter from Dr. B. L. Arms of the State Board of Health, requesting you to ascertain whether or not there is any provision of law which would authorize a transfer of \$50,000

to the State Board of Health fund pending the collection of taxes for the coming year in order to meet the possible deficit in that event.

House Bill No. 1096, Acts of the Legislature, 1927, which became a law June 6th, 1927, provides as follows:

Sec. 2. That whenever there exists in any fund provided for by law or departmental regulation a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist other funds in the State Treasury which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last mentioned fund, the Governor of the State of Florida may, with the approval of the Comptroller, order a temporary transfer of funds from one fund to another in order to meet temporary deficiencies in particular funds without resorting to the necessity of borrowing money and paying interest thereon, provided, that the fund from which any money is temporarily transferred shall be repaid the amount transferred from it as soon as practicable thereafter, same to be done upon order of the Governor and approved by the Comptroller, provided, that no transfer shall be made from the funds provided for the operations of the State Live Stock Sanitary Board.

Under this act if there is any available fund from which the \$50,000 can be taken at this time it would be lawful for you as Governor, with the approval of the Comptroller, to order a temporary transfer of \$50,000 from some other fund to the State Board of Health fund in order to meet temporary deficiencies in the State Board of Health fund without resorting to the necessity of borrowing money and paying interest thereon.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

DEATH WARRANTS—PROCEDURE.

October 27, 1927.

My Dear Governor:

I have examined the death warrants prepared for the execution of Thomas Costello and William B. Henderson, convicted of murder in the first degree in Hillsborough county.

Accompanying the death warrant is a certified copy of the indictment against these defendants as well as a certified copy of the record of the trial and conviction of the defendants and the sentence imposed upon each of them.

Section 6123 of the Revised General Statutes, as amended by Chapter 9169 of the Acts of 1923, Laws of Florida, provides:

Whenever any person shall be convicted of any crime for which sentence of death shall be awarded against him the clerk of the court as soon as may be shall make out and deliver to the sheriff of the county a certified copy of the *whole* record of the conviction and sentence and the sheriff shall forthwith remit the same to the Governor and the sentence of death shall not be executed upon such convict until a warrant shall be issued by the Governor under the seal of the State with a copy of the record thereto annexed * * *

The whole of the record of the conviction and sentence referred to in this section means transcripts of the minutes of the Circuit Court from the time of the organization of the Court, impaneling the grand jury, return of the indictment, indictment itself, arraignment and plea of defendant, impaneling of the jury, verdict of the jury, judgment of the Court and a mandate of the appellate court, if appellate proceedings appear to have been had.

Without a complete record the Governor is not authorized to issue a death warrant and it appears in the instant case that the record is defective in the following particulars:

It should show the organization of the Court, together with the selection and empaneling of the grand jury and subsequent return of the indictment in this case in addition to the certified copy of the indictment itself.

It should also show a certified copy of the mandate of the Supreme Court in all cases in which the judgment has been subjected to review upon writ of error and affirmed by such Court.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GUARD—EMPLOYMENT OF AT COUNTY JAIL.

October 29, 1927.

My Dear Governor:

I have your letter of October 21st, with which you enclosed letter from the sheriff of Hendry county, with reference to the appointment of someone to assist him at the jail and around the courthouse.

The County Commissioners would have authority to allow the sheriff a guard, to whom they could pay not more than \$2.00 per day under Chapter 7886, Acts of 1919, fixing the compensation of sheriffs.

The employment of such a guard would probably meet the requirements of the sheriff as mentioned in his letter of October 18th. There is no other provision of law which would authorize the payment of salary other than the sum of \$2.00 on the basis of his being a guard.

Respectfully,

FRED H. DAVIS, Attorney General.

SCHOOL BUSES, CLASSIFICATION OF—LICENSE REQUIRED

December 13, 1927.

My Dear Governor:

I beg to acknowledge the receipt of your letter of December 5th, transmitting to me letter received by you from Hon. A. M. Hall, Chairman Board of School Trustees, Apopka, Florida, with reference to the proper interpretation of the Motor Vehicle License Law of Florida insofar as the same relates to the applicable license fee required to be paid upon what are commonly known as school busses, which are devoted solely and entirely to the transportation of children to and from the schools of this State.

Section 1006 of the Revised General Statutes of Florida, as amended, contains a provision which reads as follows:

Provided, further, that motor vehicles used for transporting school children to and from school under contract with school officials shall not be deemed to be in use for hire.

Section 1011 of the Revised General Statutes of Florida, as amended by

Chapter 10182, Acts of 1925, among other things, provides that Series C licenses shall apply to automobiles for private use only, with a seating capacity of seven or less, to which a charge of 50 cents per 100 pounds gross weight is made.

Construing all the provisions of the Motor Vehicle License Law together, it appears to me the intention of the law that motor vehicles used for transporting school children to and from school under contract with school officials shall be deemed to be in the same class as private automobiles carrying a Series C license tag, regardless of the size or seating capacity of such school busses.

I am of the opinion, in giving effect to what is the evident intent of the Legislature in this matter, that the Motor Vehicle License Law should be so construed as to allow the issuance of licenses for school busses devoted entirely to the transportation of school children and which are under contract with the school authorities at the same rate as private automobiles are licensed, i. e., at the rate of 50 cents per hundred pounds or major portion thereof, gross weight.

I reach this conclusion because of two things appearing in the law:

First: The law itself shows that there was an intention to treat the school busses as being in the same general class as privately owned automobiles; and

Second: The reference to "passenger" automobiles or busses with a seating capacity over seven, etc., as used in the law evidently does not have reference to a school bus. The word "passenger" has a definite, fixed legal meaning, and the requirement for "passenger" automobiles must have reference to that class of automobiles which are engaged in the business of a private or common carrier and not to have reference to a bus used under contract with public authorities for transporting children to and from school in the discharge of the State's obligation to give to each child in the State an opportunity to secure a common school education.

If it were not for the fact that the reference to automobiles or busses of seating capacity of seven and not more than sixteen is modified by the adjective "passenger," the construction placed on this law by the Motor Vehicle Commissioner would no doubt apply, but as the law reads at this time the use of the word "passenger" before the word "automobiles" has the legal effect of excluding school busses from the classification thereby made, which in effect leaves such automobiles in the ordinary classification of automobiles for private use only under Series C, even though the seating capacity may be more than seven.

Under the statutes there are two primary classes of automobiles—those "For Hire" and those not "For Hire." The proviso of Section 1006 takes school busses undoubtedly out of the "For Hire" class and leaves them in the class of automobiles for private use. The designation of a special rate for "passenger" busses takes the school busses out of that class, so the only other class in which they can remain is the Series C class for private use, which takes the rate of 50 cents per hundred pounds, regardless of seating capacity in the case of school busses, which are not subject to the seating capacity limit specified in Series C.

- Trusting this fully complies with your request for my opinion in the matter, I am,

Very respectfully,

FRED H. DAVIS, Attorney General.

FEDERAL ESTATE TAX—ATTORNEY

My Dear Governor:

January 6, 1928.

I have gone carefully over the proposition brought to your attention on December 14th by personal letter addressed to you from Hon. Peter O. Knight of Tampa, with reference to the State of Florida retaining counsel to attack the constitutionality of the Federal Estate Tax Law.

I quite agree with Mr. Knight that in view of the direct and pointed purpose of Congress to aim one of its laws at the State of Florida, the State should protest against this measure with all means possible at its command.

However, in the opinion of the U. S. Supreme Court the State of Florida has no status to contest the validity of this act as a State, although it is aimed at the citizens of the State of Florida, which leaves the matter in such a way that whatever attack is made on the law must be made by means of a privately instituted and conducted lawsuit.

I have carefully searched provisions of the law which might have a bearing on the matter and failed to find any authority resting in the Governor of the State under existing statutes to pay out of State funds for the employment, or assisting in the employment of, special counsel to conduct a private lawsuit to test the validity of this Act in the face of a direct holding of the Supreme Court of the United States that the State, as a State, had no legal interest to assert the constitutionality of the Federal Estate Tax Law even if it is unconstitutional.

The matter seems to be one which should be presented to the next Legislature for action and it would be wise for the State of Florida to take up the matter and make an appropriation for the purpose of either getting this law declared unconstitutional or of securing its repeal by Congress.

In making this suggestion I realize, of course, that it is unusual and unheard of to suggest that a State appropriate its funds to conduct a lobby for the national Congress to secure a repeal of a Federal law. Yet the passage of such a law as is involved in this particular instance is itself unprecedented and unheard of. Extraordinary cases require extraordinary measures.

I am mailing copy of this letter to Hon. Peter O. Knight and Hon. E. A. Harriman.

Trusting this covers the matter submitted to me, and with kind personal regards, I am,

Respectfully,

FRED H. DAVIS, Attorney General.

SUPERVISOR OF REGISTRATION—ELIGIBILITY FOR OTHER OFFICE

February 3, 1928.

My Dear Governor:

I have your letter of February 2nd, requesting my interpretation of the following clause contained in Chapter 9271, Laws of Florida, Acts of 1923, to wit:

The supervisor of registration shall not be eligible for any other office until six months after ceasing to be such supervisor.

The Legislature of 1895 passed Chapter 4328, Laws of Florida, which first contained the provision above referred to. Chapter 4328 was entitled:

An act to provide for the registration of all legally qualified voters in the several counties of the State, and to provide for general and special elections and for the returns of elections.

It will thus be noted that Chapter 4328 became the basis for all the provisions of the Revised General Statutes relating to the conduct and holding of general elections of Florida as well as the rights, duties, privileges and obligations of various officers and electors with reference thereto. See Sections 215 through Section 298 of the Revised General Statute of Florida.

As historically and legally Section 223 of the present Revised General Statutes of Florida, as amended by Chapter 9271, Acts of 1923, forms a part of the law of the State governing General Elections and *not* primary elections the question arises as to whether or not the provisions of Section 362, Revised General Statutes, or any provision of the law of the State of Florida is broad enough to disqualify a supervisor of registration from becoming a candidate at the primary election to be held under the laws of the State of Florida in the event that it appears that he has been or is supervisor of registration of a county within six months preceding the date of the primary election.

Section 362 provides that all primary elections shall be held in accordance with the provisions of the law relating to general elections. This section is apparently broad enough to embrace in the primary election law, Section 223, as amended by Chapter 9271, Acts of 1923, relating to the right of supervisors of registration to be eligible for any other office until six months after ceasing to be such supervisor.

The question then resolves itself into the proper meaning to be imputed to the phrase "eligible for" any other office.

One meaning that may be imputed to it is whether this phrase "eligible for" means eligible to hold the office after the election or appointment, or relates to the eligibility of the supervisor to be elected or appointed in the first instance.

The obvious purpose of all the provisions of the election law, and such is the legislative intent, is that elections should be protected in accordance with the mandate of the Constitution to prescribe rules and regulations governing the conduct and holding of elections.

The primary system is a necessary and integral part of the whole election system of this State and if we consider the primary purpose of all the rules and regulations which have been enacted to govern both general and primary elections we must come to the inevitable conclusion that the proviso contained in Chapter 9271, Acts of 1923, was intended to restrain the supervisor of registration for a period of six months after ceasing to be such supervisor from being in anywise connected with any office, either as a candidate or as the holder of such office, thereby preserving during his tenure as supervisor his impartial administration of the election laws.

I am, therefore, of the opinion that the proviso to Section 223, which is contained in the amended section contained in Chapter 9271, Acts of 1923, is a bar to the right of the supervisor of registration to be either a candidate for, be appointed or elected to, or to hold any office until six months after ceasing to be such supervisor.

As to whether or not the County Democratic Executive Committee would have the right to refuse to accept the qualification of a supervisor of registration who attempted to become a candidate in violation of this section,

I am of the opinion that no such power is vested in the Democratic Executive Committee and that whether or not the supervisor is qualified to become a candidate it is the duty of the chairman of the County Executive Committee as well as the duty of the clerk of the Circuit Court, in administering the primary election law, to receive the qualification fees and papers of the supervisor and accept him as a candidate for office in the primary as their duties are merely ministerial and involve no right or duty on their part to determine whether the supervisor is violating the law by becoming a candidate for office under Section 223, as amended by Chapter 9271, Acts of 1923.

However, I am of the opinion also that should the supervisor of registration of the county violate the law and become a candidate when he is not eligible such action on his part would enable the setting aside of his election on the ground that he was disqualified to be elected to the office to which he was elected.

I might call attention to the fact that the matter of whether or not administrative officers who are called upon to administer the primary law can raise the question of eligibility is now pending before the Supreme Court of this State in the case of *State of Florida ex rel. John H. Taylor v. H. Clay Crawford*, Secretary of State, and what I have said above may be materially changed by the holding of the Supreme Court in the pending case.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

INSPECTORS OF BUREAU OF INSPECTION; PAYMENT OF SALARIES AND EXPENSES

March 16, 1928.

My Dear Governor:

I have your request under date of March 12th for my opinion as to the interpretation of the provisions of law relating to the payment of the salaries of inspectors appointed by the Governor for the Bureau of Inspection as provided by law.

Section 2 of Chapter 10149, as amended by Chapter 11998, Acts of 1927, contains the following provision relating to the subject:

Each inspector appointed under the provisions of this Act shall receive a salary of twenty-four hundred dollars per annum, payable monthly in the same manner as other State officials, and shall be reimbursed for his expenses incurred while on official business, * * * such bills for *expenses* to be audited by the supervising inspector and approved by the Commissioner of Agriculture. * * *

The quoted provision of law is self-explanatory. It will be noted that while the *expenses* incurred by these inspectors are to be audited by the supervising inspector and approved by the Commissioner of Agriculture, the salary of such inspectors is payable as the law says "in like manner as the salaries of other State officials" are paid, which is upon the requisition of the inspector drawn upon the Comptroller, for which the Comptroller issues his warrant drawn upon the Treasurer of the State of Florida to be paid when countersigned by the Governor.

There appears to be no requirement in the law that salary requisitions for inspectors of the Bureau of Inspection shall be approved by either the supervising inspector or by the Commissioner of Agriculture, although no *expenses*

can be paid without being audited by the supervising inspector and approved by the Commissioner of Agriculture.

I return herewith your letter and the documents submitted to me therewith.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CHIROPRACTORS

March 30, 1928.

My Dear Governor:

I notice letter dated March 13th, addressed to you by Thomas D. Varrar of Lakeland Fla., in which he requested information as to whether or not a chiropractor has the right to sign health certificates, for internship to hospitals, hotels and restaurants and make examinations.

The examination of a person to ascertain whether or not such person is suffering from any contagious or infectious disease involves the application of diagnosis of a person to treat the disease, if such is found to exist. As the practice of *materia medica* and surgery is not permitted to chiropractors under the law they would not have the authority to make examinations and sign health certificates insofar as the health certificates are to disclose the presence of contagious or infectious diseases, where a certificate upon the subject is required by law.

As to internships in hospitals, the matter would be governed entirely by the rules of the hospital. The law would have nothing to do with it.

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLES—COSTS FOR SERVING PROCESS OUTSIDE HIS DISTRICT

May 11, 1928.

My Dear Governor:

Replying to your letter of May 9th, transmitting to me inquiry received by you from Hon. C. N. Wilson, Justice of the Peace, Alachua County, I beg to advise that Section 2897, Revised General Statutes, reads as follows:

POWERS TERRITORIALY.—Any constable of the county in which the process issued may serve process of the County Judge's courts and Justices of the Peace courts in any district of said county where the same may be lawfully served: Provided, He shall not be entitled to greater mileage in any case in serving writs from courts of the Justices of the Peace than he would be if the writ issued from such court in the district in which such constable resides and for which he was elected.

My interpretation of this section is that the constable may serve process of either County Judge's Court or Justice of the Peace Court anywhere in the county of which he is constable, but he would not be authorized to leave his own district and go to serve process in another district and thereby obtain more fees for serving papers outside of his district than he would for serving such papers within his own district.

In other words, if a Justice of the Peace from a district other than his own issues a paper which comes into the hands of the constable, such constable may serve it within the district for which he is constable or he may go

outside of his own district and serve it in another district, but in the latter case he gets no more fees than if he served the process in his own district.

The idea of the law was to give the constable power to serve papers anywhere in the county, but to give him no more fees than if he served them in his own district.

Trusting this answers Mr. Wilson's inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ADJUTANT GENERAL—APPOINTMENT

June 20, 1928.

My Dear Governor:

For your information in making an appointment as successor to Hon. J. C. R. Foster, Adjutant General, deceased, I quote herewith that portion of the statute which governs the making of such appointments in order that you may be advised as to the requirements of the law governing same and may make your appointment in conformity with this law.

Section 9 of Chapter 8502, Acts of 1921, governs in such cases and the applicable portion relating to the Adjutant General reads as follows:

The staff of the Governor shall consist of the following officers to be appointed and commissioned by him with brevet rank, but not as officers of the National Guard. They shall hold office at his pleasure except as otherwise may be provided: One Adjutant General of the State with the rank of Brigadier General, who shall be Chief of Staff, and who shall be appointed by the Governor with the advice and consent of the Senate, and who prior to his appointment shall have served at least five years in the Florida National Guard, or shall have served in the Army of the United States in the war with Spain or the war with the Central European Powers. * * *

Under this statute a commission should be issued to the person appointed as Adjutant General to hold office at the pleasure of the Governor until the end of the next session of the State Senate unless an appointment be sooner made and confirmed.

I might also advise that in addition to the foregoing requirements of the State law on the subject the Federal laws and regulations require that the Adjutant General of each state be a person of such military qualifications as will enable him to secure Federal recognition as an officer of the grade and rank of Adjutant General, which grade and rank the Florida statute fixes as that of Brigadier General.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CONSTABLES—COSTS FOR RETURNING PRISONER TO DISTRICT FOR TRIAL

July 16, 1928.

My Dear Governor:

I acknowledge receipt of your letter of July 14th, transmitting to me letter received by you from Manuel M. Glover, Justice of Peace, Polk county, stating that he and Hon. Dan Marshall, constable of the Tenth District, are desirous of obtaining my opinion with reference to constables' fees for returning prisoners from points in the State to their district for trial.

I note your request for my opinion in the premises and in reply thereto respectfully call your attention to an opinion on this same subject rendered on July 12, 1924, by Hon. Rivers Buford, former Attorney General, and now a Justice of the Supreme Court, who held as follows:

* * * a constable is entitled to receive the same fees as a sheriff for mileage and in the execution of a criminal warrant, and for the conveyance of a prisoner he is entitled to the same mileage and expense as are allowed by statute to the sheriff whether such mileage occurs within his district or beyond the limits of his district.

A test case was made in regard to this matter by a constable by the name of Roberts of Lake City, which case was appealed to the Supreme Court. The Supreme Court, however, decided the matter in favor of Roberts with a *per curiam* decision and, therefore, the citation of the decision would be of no value to you. If you cared to examine the transcript of the record, however, you will find the same in the Supreme Court, the case being reported as *Brown v. Roberts*, 83 Fla., page 716, 92 Sou., page 57.

I can only say that I concur in this opinion rendered by Mr. Buford and I think that the case stated by him fully sustains his holding.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY LAW—STATE,—BRITISH SUBJECTS

August 2, 1928.

My Dear Governor:

I have your letter of July 31st, transmitting to me the letter received by you from Hon. Frank B. Kellogg, Secretary of State of the United States, in which he makes inquiry as to the legal effect of the following language contained in Senate Bill No. 282, Acts of 1927, relating to the State Board of Accountancy, viz.:

Any person not a citizen of the United States, when he or she receives a certificate issued under this act shall have such certificate revoked unless within six years of the receipt thereof, he or she shall become a citizen of the United States.

The Act in question—Chapter 12290—otherwise known as Senate Bill No. 282, limits the granting of certificates to residents of the State of Florida over the age of twenty-one years, of good moral character, who are graduates of a high school with a four years' course and who have had sufficient experience to comply with the rules of the State Board of Accountancy.

Section 4 of the Act provides that the board may waive the examination of any person possessing the qualifications mentioned in Section 1 when his record and professional standing are satisfactory to the board and such person shall have practiced public accounting for five years preceding the passage of the Act, of which three years immediately preceding that date shall have been in the State of Florida; and provided he shall have applied for such certificate before December 31st, 1927.

It was contemplated that there might be persons practicing accountancy in the State of Florida who would obtain certificates under Section 4, although they were not citizens of the United States, and it was also contemplated that there might be other residents of the State who were not

citizens of the State who might apply for and obtain a certificate of accountancy under Section 1 of the Act, but it was also contemplated that in the event that a person, who was not a citizen of the United States and who obtained a certificate of the right to practice the profession of accountancy, would forfeit such certificate at the end of six years unless he or she became a citizen of the United States.

British subjects will, therefore, have no right to practice accountancy in this State longer than six years under a certificate issued by the State Board of Accountancy.

Trusting this gives the information requested by the Honorable, the Secretary of State of the United States, I am,

Respectfully,

FRED H. DAVIS, Attorney General.

CRIMINAL COURT OF RECORD—ASSIGNMENT OF JUDGE TO HOLD TERM OF COURT.

August 11, 1928.

My Dear Governor:

I find that the assignment of judges to hold a term of the Criminal Court of Record of any county is governed by Section 5966, Revised General Statutes of Florida, which reads as follows:

When the judge is disqualified to try any case, or unable for any reason to hold a term of his court, he shall file a suggestion to that effect with the clerk, who shall immediately notify the Governor, and the Governor shall thereupon assign a judge of some other Criminal Court of Record to try the case or hold the term.

I am of the opinion that under this section of the statutes only a judge of some other Criminal Court of Record of this State can be assigned to try a case or hold a term of the Criminal Court of Record in the event the resident judge of such court is disqualified or is unable for any other reason to hold a term of his court.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

SUPERVISING INSPECTOR, NAVAL STORES—TERM OF OFFICE.

August 16, 1928.

My Dear Governor:

The appointment of the supervising inspector of Naval Stores is governed by Section 4945, Revised General Statutes of Florida, which provides that the Governor shall appoint a supervising inspector of Naval Stores, who shall be subject to removal by the Governor at any time for cause.

No specific term of office is provided for the supervising inspector of Naval Stores and it is apparent from the statute that the appointment of such supervising inspector of Naval Stores should be made without specification as to term, subject to removal by the Governor for cause.

I find no authority in the statute for making the term of office four (4) years, although this may be implied from the constitutional provision which prohibits the Legislature from creating any office the term of which shall be longer than four years.

The position of supervising inspector of Naval Stores was created by Chapter 1878, Acts of 1915.

My opinion is that the supervising inspector of Naval Stores should be commissioned to hold office until removed by the Governor for cause not exceeding the term of four (4) years from the date of the commission.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

OFFICIAL BONDS—SUITS.

September 13, 1928.

My Dear Governor:

Answering your valued favor of the 12th inst., I beg to advise that bonds are made payable to the Governor for the use and benefit of any person who might be interested in the official conduct of officers or trustees.

Under the statute allowing the real parties in interest to be parties, an interested party would have the right to start a suit in the name of the Governor without even applying for permission to do so. However, it is a courtesy to the Governor to make such application and such application should be granted by the Governor as a matter of course inasmuch as the rights under the bond can only be enforced by suit in the name of the obligee.

Respectfully,

FRED H. DAVIS, Attorney General.

STATE ATTORNEYS—ASSIGNMENT TO OTHER CIRCUITS.

October 12, 1928.

My Dear Governor:

I have your communication of October 5th, submitting the attached letters from Hon. Dewey A. Dye, State Attorney, and note your request as to the statutes applicable to the assignment of State Attorneys to other circuits.

The matter is covered by Section 4743, Compiled Laws, 1927 (Sec. 3009, R. G. S.), which reads as follows:

That if any State Attorney shall be disqualified to represent the State in any case pending in the Circuit Court of his circuit, or if for any reason the Governor of the State thinks that the ends of justice would be best subserved by an exchange of State Attorneys, the Governor may require an exchange of circuits or of courts, in any of the counties of this State between such State Attorney and any other State Attorney of the State, or may assign any State Attorney of the State to the discharge of the duties of State Attorney in any circuit of the State, at any regular or special term of the Circuit Court.

You will note that under this statute, the Governor may assign any State Attorney of this State to discharge the duties of State Attorney in any circuit of the State at any regular or special term of the Circuit Court.

If an assignment is made under this clause of the statute, it is not necessary that any particular case or matter be specified or any particular reason be given by the Governor for his assignment of a State Attorney to discharge the duties of State Attorney at any regular or special term of the Circuit Court but the assignment, when made, should specify the term of court at which the assigned State Attorney is to act and the length of time

for which the assignment is to run. For example, the assignment may be made to discharge the duties of State Attorney in the Circuit Court of the State of Florida, in and for County, for and during the first days after the convening thereof.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

SECRETARY OF STATE.

CORPORATIONS—USE OF WORD "CORPORATION" OR "INCORPORATED" IN NAME

January 27, 1927.

Dear Sir:

This is to acknowledge the receipt of wire from R. F. Burdine, addressed to you, with reference to the reincorporation of the Biscayne Properties under the 1925 Corporation Law.

I note the provisions of Section 64 of this Act, which provide:

Any corporation organized and existing under the laws of this State on the date on which this Act becomes effective, may reincorporate under this Act either under the same or a different name.

* * *

Taking this alone, it would appear that the Biscayne Properties could reincorporate, using the same name under which it is incorporated at present under the old law.

Paragraph 1 of Section 3 of this same Act provides:

The name of the proposed corporation, which name shall include the word company, or corporation, or have such word or words, abbreviation, affix or prefix therein or thereto as will clearly indicate that it is a corporation as distinguished from a natural person, firm or co-partnership and shall be such as to distinguish it from any other corporation authorized to engage in business in this State. * * *

It is my opinion that the reincorporation of the Biscayne Properties should carry such affix or prefix as would indicate that the Properties are a corporation, in compliance with the paragraph just quoted.

I am unable to put any other construction on this provision.

Very truly yours,

J. B. JOHNSON, Attorney General.

CORPORATIONS—PRINCIPAL PLACE OF BUSINESS TO BE IN FLORIDA

February 9, 1927.

Dear Sir:

You have submitted to me the question as to whether or not a corporation organized under the present laws of the State of Florida will be authorized to name some city or town outside of the State of Florida as its principal place of business, not naming such place of business in its charter within the State of Florida.

It is my opinion and I so advise that it is the purpose and intent of the provisions of Chapter 10096, Laws of Florida, Acts of 1925, that the principal place of business to be named in the charter shall be some city or town in the

State of Florida. In matters of this kind the jurisdiction and authority of the State do not extend beyond the limits of the State.

Paragraph 6 of Section 3 of Chapter above cited provides that the certificate of incorporation shall set forth "the city or town and county in which the principal office of the corporation is to be located."

It is my opinion that it was the purpose and intention of this provision that the city or town should be within the limits of the State of Florida. There is nothing in the law that will preclude a Florida corporation from establishing offices in any other state and doing business in such other state provided the corporation complied with the laws of such other state.

Very truly yours,

J. B. JOHNSON, Attorney General.

CORPORATIONS—REINCORPORATION UNDER 1925 ACT

February 23, 1927.

Dear Sir:

I am in receipt of your favor of the 22nd inst., as follows:

There seems to be some misunderstanding as to how, and what a certificate of reincorporation shall contain, as per Section 64, Chapter 10096, Acts of 1925.

This section states that a certificate shall be prepared setting forth the statements as required in an original certificate by Section 3 hereof.

The matter in question is how a certificate of reincorporation can comply with Section 3, paragraph 9. The original certificate has already been subscribed to, and in case of reincorporating there might be a hundred or more subscribers, and the parties wishing to reincorporate claim that this isn't necessary.

Will thank you to advise this office if a certificate of reincorporation shall carry out the provisions under Section 3, or if there are any exceptions.

Section 64 of the Corporation Act of 1925 reads in part as follows:

Any corporation organized and existing under the laws of this State on the date on which this Act becomes effective, may reincorporate under this Act either under the same or a different name by filing with the Secretary of State a certificate executed by its president and attested by its secretary under the corporate seal and duly authorized by a meeting of the stockholders called for that purpose, setting forth the statements required in any original certificate by Section 3 hereof, and in addition surrendering the existing charter or certificate of incorporation of the corporation and accepting the provisions of this Act. * * *

You will note from the above quoted section these words: " * * * setting forth the statements required in the original certificate by Section 3 hereof, and in addition surrendering the existing charter or certificate of incorporation of the corporation and accepting the provisions of this Act." * * *

One of the statements required by Section 9, Article III of this Corporation Act is:

The name and post office address of each subscriber of the certificate of incorporation and a statement of the number of shares of stock which he agrees to take.

If the requirements of this paragraph 9 could be eliminated and still comply with the provisions of this law then it seems to me that any other paragraph could be eliminated.

It is my opinion that the articles of reincorporation should show the post office address of each stock holder or subscriber to stock in the new corporation.

Very truly yours,

J. B. JOHNSON, Attorney General.

CORPORATIONS—RESIDENT AGENT ACT

June 9, 1927.

Dear Sir:

Replying to your letter of June 8th, asking my opinion with reference to certain points bearing on House Bill No. 776, which you state are not exactly clear to you, I beg to advise as follows:

Section 9 of House Bill No. 776 provides:

* * * that this Act shall be deemed cumulative of all other provisions of law. * * *

And as I construe it, the Act shall be deemed as supplementary to Chapter 10096, Acts of 1925, relating to corporations.

In reading House Bill No. 776 in connection with the provisions of Chapter 10096 of the Acts of 1925, it would appear that under Section 56 the Secretary of State is required to charge \$2.00 in each case for receiving and filing the annual certificates required by Section 12 of House Bill No. 776.

Further answering your questions, I will state that it is my opinion that if the corporation complies with Sections 1 and 2 of House Bill No. 776 it does not have to comply with Section 3; and if a corporation complies with Section 3 of House Bill No. 776 it does not have to comply with Sections 1 and 2. If it complies with Section 1, the statute provides that the fee of the Secretary of State shall be \$1.00. If it complies with Section 3, the statute also provides that it shall pay a fee of \$1.00. In cases where the corporation might comply with Sections 1 and 3, I see no way in which the Secretary of State can escape charging the fee of \$1.00 for each certificate.

While there is no necessity, as I have stated, for a corporation to attempt to comply with both Sections 1 and 3, yet if it undertakes to do so it should be required to pay the filing fee under each of these sections.

As to the certificates of acceptance required by Section 2 of House Bill No. 776, I am of the opinion that the fee required to be paid under Section 1 relative to the appointment, viz., \$1.00, was intended to cover the filing of the statement of acceptance contemplated by Section 2 and that no additional fee for filing the statement in writing excepting the appointment of an officer or agent for service of process should be required and it appears to me that Sections 1 and 2 of House Bill No. 776 should be construed together as contemplating one general scheme.

As I have stated, it is my opinion that the fee of \$2.00 should be charged under Section 12 for filing the statement, giving the names and post office addresses of each of the officers of the corporation annually is based upon the reading of Section 9, which provides that the provisions of House Bill No. 776 shall be cumulative of all other provisions of law. This means that these provisions should be deemed cumulative of the provisions of Section 56 of Chapter 10096, Acts of 1925, which section provides that for receiving, filing

and indexing certificates, statements, affidavits, decrees, agreements, reports and any other papers provided for by this Act, \$2.00 in each case.

However, in cases mentioned in the first part of Section 12 of House Bill No. 776, i. e., where the corporation shall file a certificate mentioned in Sections 1 or 3 of that Act and also file with the Secretary of State a certificate wherein it shall be stated the names and post office addresses of each of the officers and directors of said corporation respectively, it would seem that only one filing fee was contemplated, viz., fee of \$1.00 mentioned in Section 3 of House Bill No. 776. Where both of these certificates are filed at one and the same time it would seem that a consolidated certificate embracing the matters required by Sections 1 and 3 and the special matters required by Section 2 might be filed by a corporation, thereby eliminating any extra filing fee for filing these papers separately.

In construing Section 12 as I do relative to the annual statements required to be filed by the corporation each year, I am unable to reach the conclusion that it was the intention of the Legislature to cast this vast amount of work on the Secretary of State's office to be done without extra compensation therefor, and it seems that the provisions of Section 9 are ample for holding that it was the intention of the Legislature to have the regular filing fee of \$2.00 apply in all cases except where the limited fee of \$1.00 provided in House Bill No. 776 was specially applicable.

Trusting this answers your several questions satisfactory, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATIONS, FOREIGN—CESSATION OF BUSINESS IN FLORIDA.

June 15, 1927.

Dear Sir:

I have your letter request of June 10th, asking my opinion as to whether or not a foreign corporation can forfeit its permit or file in your office a certificate setting forth a statement that it ceased to do business in Florida on a certain date and announcing that its withdrawal from doing business in such a manner that the corporation would not have to comply with recent law passed by the 1927 session of the Legislature, relating to resident agents, viz. House Bill No. 776.

Sections 4095 to 4110, inclusive, contemplate that all foreign corporations within the purview of these sections shall apply to the Secretary of State to obtain from him a permit authorizing such corporation to transact business in Florida before transacting any business or acquiring, holding or disposing of any property in this State.

Certain fees are provided by these statutes to be paid by such foreign corporation before the permit can be issued and certain penalties are visited upon the foreign corporations who fail or refuse to comply with the act, if they are within its terms.

The permit contemplated is the property of the corporation when it has been issued and like any other property right of the corporation can be surrendered or waived by the corporation holding it.

I am, therefore, of the opinion that a foreign corporation which has applied for and obtained a permit to do business in Florida under the above numbered sections of the Revised General Statutes has the legal right by

filing with you a duly executed document showing its voluntary relinquishment and waiver of a permit to do business and to announce its withdrawal from the transaction of business in Florida, and thereby to withdraw from such transaction of business in Florida and a further compliance with any laws of the State of Florida which have for their basis the assumption that the continuance of the transaction of business will require it to make certain reports and do certain things so long as business is transacted.

Upon the filing with you of a duly executed document in writing authorized by the board of directors of the foreign corporation which has obtained a permit under the law to do business in Florida, you should issue to such corporation a certificate stating that the document has been executed and filed with and accepted by you and that from the date of such certificate all further authority of such foreign corporation to do business in Florida is revoked and that no further compliance by said corporation with any provisions of the laws relating to foreign corporations which are based upon the continued transaction of business in Florida under such permit would, therefore, be necessary.

As you are given by law the legal authority to grant a permit to a corporation at its solicitation, or request, I am of the opinion that the authority to grant a permit at the request of a corporation is broad enough to include authority to revoke a permit already granted when such revocation is at the solicitation or request or with the consent of the grantee of the permit.

As to the question of forfeiture of permit already obtained without the consent of the foreign corporation holding it, I am of the opinion that such forfeiture could not be accomplished except by proper *quo warranto* proceedings instituted by the Attorney General against the foreign corporation as to which corporation it could be alleged and proved that such corporation had violated the laws of this State in such manner as to warrant such forfeiture.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS—RESIDENT AGENT ACT.

June 21, 1927.

Dear Sir:

I beg to acknowledge receipt of your letter of June 20th asking the following question:

Where a corporation has complied with the provisions of the corporation law, designating a principal place of business and naming a resident agent, and resident agent filing certificate of his acceptance, prior to the enactment of H. B. 776; would, in your opinion all such corporations be required to file another certificate in compliance with the provisions of H. B. 776? The old certificates do not show the officers and directors as required in Section 12 of H. B. 776.

Replying to this question, I will state that it clearly appears from House Bill No. 776 that it was the intention of the Legislature that all corporations in this State, except those expressly excepted by the provisions of Section 14 of the act, should be required to comply with the requirements of

said act, irrespective of whether or not such corporations had already filed with you certificates showing that they had appointed resident agents.

During the past years there were many corporations in Florida which filed a certificate showing the name of a resident agent, giving his address at some hotel or boarding house in the large cities, and it would be impossible to secure service on the corporations by reference to this certificate, which did not show any detailed information such as is required by House Bill No. 776.

The express purpose of the law of 1927 is to require each and every corporation now organized, and which may hereafter be organized, whether foreign or domestic, to file with the Secretary of State, within 60 days from the time said House Bill No. 776 became a law, such certificate so as to make more effective the ability to perfect service of process upon corporations in this State, and that being the announced purpose of the act, it seems to be clear from this purpose, and the language of the act itself, that each and every foreign and domestic corporation which shall continue to do business in Florida must comply with the new law by filing with you the certificates required by the several sections of the new act irrespective of whether or not it has previously designated its resident agent under the law of 1925.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—RESIDENT AGENT ACT—DESIGNATION OF AGENT
—PENALTY.

July 27th, 1927.

Dear Sir:

I have your letter of July 16th reading as follows:

After a careful study of House Bill No. 776 I do not understand from said bill that a corporation can name another corporation as its resident agent. My understanding of this bill is that the resident agent must be an individual or individuals. Referring to Sections 2, the last sentence in this section reads as follows: "Each officer or agent upon whom process may be served and mentioned in this section shall, within ten days after being designated, file with the Secretary of State a statement in writing, accepting the appointment as such officer or agent for the service of process." I have made a careful study of this bill, and do not understand from the provisions contained therein that corporations can act in the capacity of a resident agent. I will thank you to advise me as to your opinion in this matter.

In this connection, I would also like to ask if it shall be my duty to see that the penalty is imposed and collected by this office, as provided in Section 13 of said bill, on and after the sixty-day limit, as provided in the bill.

Section 57 of Chapter 10096, Acts of 1925, provided that "Every corporation shall have a place of business in this State and shall have a resident business agent who may be either an individual or a corporation resident of or located in this State, in charge thereof." Section 9 of House Bill No. 776 provides that "This act shall be deemed cumulative of all other provi-

sions of law, etc." It is therefore apparent that it was not the intention of the Legislature, by the enactment of House Bill No. 776, to repeal, alter, effect, or modify the provisions of Section 57 of Chapter 10096 to the effect that a corporation might have another corporation as its resident agent.

I am, therefore, of the opinion that the language of Section 2 of House Bill No. 776, referred to in your letter, does not prevent a corporation naming another corporation as its agent upon whom process may be served under House Bill No. 776, it being my opinion that the word agent as used in the last sentence of Section 2 of House Bill No. 776 is sufficiently broad to include any resident agent who might be lawfully named under the provisions of Section 57 of Chapter 10096, Acts of 1925, it being evident that there was no intention to repeal any part of Chapter 10096 by the enactment of House Bill No. 776 which is expressly stated to be accumulative thereto.

Replying to the second paragraph of your letter asking whether it is your duty to see that the penalty provided by Section 13 of House Bill No. 776 is imposed and collected by your office, I will state that I do not find in said section 13 any express provision mandatorily requiring you to impose or collect this penalty, although such is within your power and is your privilege to do so as a means of carrying out your duties under the provisions of House Bill No. 776. My suggestion is that you submit the names of defaulting corporations to the appropriate State Attorney of the district wherein such corporation is organized or does business for appropriate action.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS—FOREIGN—INCREASE IN CAPITAL STOCK—FFES.

August 6, 1927.

Dear Sir:

I have your letter of July 11th, reading as follows:

I have of record in this office a foreign corporation who qualified to do business in this State on June 26th, 1919, and paid at that time the maximum charter tax that I was required to collect.

Now, this corporation has increased its capital stock, and wishes to file in this office certificate of such increase, and I will thank you to advise if I shall collect charter tax on a basis of Chapter 9124, Acts of 1923, or Chapter 10096, Acts of 1925.

Apparently, there is some confusion as to which scale is applicable in a case of this kind. As you know, the scale as provided by the 1923 act is higher than the 1925 act. I have another case a little different to this.

A corporation that was in existence prior to the enactment of the Corporation Act of 1925, that had never reincorporated under the 1925 act, and who wished to increase its capital stock; would they be required to pay on a basis of the 1923 act or the 1925 act?

You will notice by Section 63 of Chapter 10096, Acts of 1925, that Section 4052 of the Revised General Statutes of Florida as amended by Chapter 9124 of the Acts of 1923 does not apply to corporations incorporated or reincorporated under the 1925 act but as the statute expressly says "Shall remain in full force and effect as to corporations incorporated previous to the effective date of this act." (Meaning Chapter 10096, Acts of 1925).

Section 4096 of the Revised General Statutes provides that for foreign corporations the Secretary of State shall collect "for the use of the State a sum equal to that which the said corporation would have been required to pay as a charter fee if it had been incorporated under the laws of this State." The corporation which you mention in paragraph one of your letter, incorporated on June 26th, 1919, as a foreign corporation, therefore falls within the last clause of Section 63 of Chapter 10096, Acts of 1925, which last clause provides that Chapter 10096 shall not effect the provisions of Section 4052 as amended by the Acts of 1923 when applied to corporations incorporated previous to July 15, 1925, the effective date of Chapter 10096.

You are, therefore, required to collect for the amendment of this charter the same fees that would be collected for the amendment of a Florida corporation charter which had been granted prior to July 15, 1925, that is, according to Chapter 9124, Acts of 1923.

Answering the last paragraph of your letter, you will readily see that on the same principle a corporation that was in existence prior to the enactment of the Corporation Act of 1925 (Chapter 10096), and which had never reincorporated under the 1925 Act, and which wished to increase its capital stock, would be required to pay on the basis of Chapter 9124, Acts of 1923, under the terms of Section 63, of Chapter 10096, which does not effect corporations incorporated previous to the effective date of Chapter 10096.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS, FOREIGN—WHAT CONSTITUTES DOING BUSINESS IN FLORIDA.

September 30, 1927.

Dear Sir:

Section 4095 of Revised General Statutes provides that no foreign corporation shall transact business or acquire, hold or dispose of property in the State of Florida until it shall have complied with the provision of that section. The general rule is that when a foreign corporation transacts some substantial part of its ordinary business in a state, it is engaging in business therein within the meaning of statutes like this. This rule is not altered by the fact that some of the transactions constitute interstate or foreign commerce but it is beyond the power of the State to impose burdensome conditions or restrictions on the rights of foreign corporations to engage in interstate or foreign commerce, and a foreign corporation is held to be doing business in the State by making and completing sales or by making and performing contracts for the sale of goods therein notwithstanding interstate transportation of the goods acquired to effect and deliver to the purchaser in consummation of such sales or contracts wherein addition thereto it performs or is required to perform therein acts of purely local character which are not essential to the making of the sales and the delivery of the goods.

If such corporation is also doing business when it has shipped goods to a state and such goods are located within the state and the interstate character of their shipment has ceased, provided they are delivered to the purchaser, then the consummation of such sales does not require further transportation from one state to another. It is generally held, however, that where a foreign corporation ships, or contracts to ship goods, from outside

the state to a factor in the state or to a local merchant in the state and to be sold on commission, such acts do not constitute doing business in the latter state, provided the local merchant or factor acts entirely in his own behalf in making sales or contracts in such latter state for the sale of such goods; but if the local factor or merchant is constituted as an agent with power to complete a sale of the goods, this would constitute the corporation principal as being engaged in the transaction of business in the state.

Under the facts stated in the letter submitted by you from Messrs Hewitt, Brooker & Kern for the Kuhlman Electric Company, such company would not have to qualify to do business or become domesticated in Florida unless the local merchants in Tampa to which it has shipped goods on consignment has authority to make a contract for the company with reference to such goods if such local merchants in Tampa act entirely in their own behalf in making sales or contracts of the goods on commission to be paid by the Kuhlman Electric Company with no relation of agency between such company and merchants, it is not required to qualify to do business in Florida.

Trusting this answers your request for my opinion under date of September 30th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

**CORPORATIONS—SUSPENSION AND REMISSION OF FORFEITURES
INCURRED BY FAILURE TO COMPLY WITH RESIDENT AGENT ACT.**

October 27, 1927.

Dear Sir:

I have your request of October 22nd for my opinion as to whether or not you are authorized to remit a penalty of \$86.00 incurred by Lester & Smith, Inc., for failure to comply with the Secretary of State within the time limited by Section 1 of House Bill No. 776, Acts of 1927.

I am forced to advise that no such power is vested in the Secretary of State, but that relief in this matter may be properly granted by a suspension of forfeiture made by the Governor under Section 11 of Article 4 of the Constitution of the State of Florida, or by a complete remission of the forfeiture by the State Board of Pardons under Section 12 of Article IV of the Constitution.

I would suggest that if in your judgment the circumstances warrant relief from the forfeiture incurred by this company, that you address a communication to the Governor recommending the suspension of the collection of the forfeiture in question. A suspension made by the Governor alone would have the same effect as a suspended sentence awarded by a judge in a criminal case. It would not permanently remove the liability, but such liability could be by the Governor suspended indefinitely or definitely as he thought best.

Yours very truly,

FRED H. DAVIS, Attorney General.

CORPORATIONS—RESIDENT AGENT ACT—PENALTY

October 27, 1927.

Dear Sir:

I have your letter of October 26th, in which you ask my opinion as to the proper method to pursue in collecting the penalty stated in House Bill No.

776 to be imposed upon delinquent corporations who fail to comply with that Act, which is entitled as follows:

AN ACT requiring each corporation doing business in the State of Florida to file with the Secretary of State a certificate either designating the office of a clerk of a circuit court and the clerk of said court for any county as its office and agent for the service of process, or a certificate showing its office or place of business for the service of process in this State. * * *

By the provisions of House Bill No. 776 all foreign and domestic corporations except those specifically exempted in the Act were required to file certain certificates with the Secretary of State, designed to make effective the means of serving process upon such corporations in all legal actions brought against them in Florida.

A reasonable length of time was given each corporation in order that it might comply with the requirement of this Act. This time has now expired in so far as corporations already doing business are concerned.

Since the purpose of the Act was to make effective the means of serving process upon corporations so long as anything remains to be done by the corporation toward complying with the law, such corporation is in default within the meaning of Section 13 of the Act and is subject to the penalty of \$1.00 per day for each day of such default as provided in said Section 13 of the Act. Partial compliance with the Act is not sufficient and so far as interrupting the application of this \$1.00 per day penalty, should be disregarded. Therefore, in computing the penalty of \$1.00 per day the time such penalty begins is the time when the corporation should have done all on its part to be done in complying with this law. It is not contemplated that the \$1.00 per day penalty shall be applied to the failure to file each of the certificates mentioned in the letter. The corporation has either complied with the law or is completely in default. There is no middle ground. Consequently, the fact that a corporation has filed one or two of the required certificates neither adds nor takes away from the applicable penalty of \$1.00 per day for its default.

To illustrate: If there were anything remaining to be done by a corporation toward complying with the terms of the law, either in whole or in part, at the expiration of the 60 days mentioned in Section 1 of the Act or the 36 days mentioned in said Section 1 of the Act, such corporation by reason of its default in complying with the law becomes subject to the \$1.00 a day penalty and remains subject to it until everything which is required of it has been fully completed.

Where two certificates are required to be filed it takes both certificates or statements to fulfill the requirements of the Act, and as long as either of such two required statements or certificates remain unfilled the purpose of the Act is defeated and the corporation is in default and the penalty should be applied at the rate of \$1.00 per day for the default of the corporation, not for the failure to file any particular certificate.

Trusting this covers the subject of your inquiry of October 26th, I am,

Respectfully,

FRED H. DAVIS, Attorney General. -

CORPORATIONS—CHANGE OF CAPITAL STOCK—FEE FOR FILING
CERTIFICATE

October 29, 1927.

Dear Sir:

I have examined your letter of October 18th, with reference to request made by Hon. W. I. Watson as to the proper interpretation to be placed on the provisions of Chapter 10096, Acts of 1925.

Chapter 10096 was construed in many respects by both Attorney General Buford and Attorney General Johnson. It has been my policy as Attorney General not to interfere with any of the rulings of my predecessors, even though I might have reached different conclusions from theirs on the same matter.

Unless the matter is covered by previous ruling received by you from my predecessors it is my interpretation that the provisions of Chapter 10096, providing for amendment of capital stock by increase in such stock do not contemplate the payment of additional fee of \$10 for filing certificate which evidences the amendment. In short, I interpret the provision requiring the \$10 filing fee for filing amendment to charter means such amendments as are not incidental and necessary to be made under other sections of the same law.

As a corporation could not legally increase its capital stock without making an amendment to the charter, and as the charges are made for the amount of increase included in the amendment, it would appear that the payment made on the capital stock is sufficient to include all necessary incidents to the increase in the capital stock. In short, the State charges a corporation so much to increase its capital stock. The amount which may be charged for such increase is limited by the law. An amendment to the charter is necessary to give effect to the increase and, therefore, the State has to file the amendment for the amount of charter fees in order that they might make delivery of that for which it is paid, i. e., the increase of capital stock.

You will understand that this opinion is rendered subject to any previous opinion which may have been rendered by my predecessors, as it is my intention to change no previous opinions rendered on this same subject.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS—RESIDENT AGENT ACT—DISSOLUTION

December 31, 1927.

Dear Sir:

This will acknowledge the receipt of your letter of December 30th, reading as follows:

I will thank you to advise me if I should file a certificate of dissolution for a corporation organized under the Corporation Law of 1925, who has failed to comply with Chapter 11829, Laws of Florida, 1927 Session, relative to designating place of business or domicile for the service of process within this State. I have reference to a corporation that has failed to comply within the time specified in the Act, that is, Chapter 11829.

Section 44 of Chapter 10096, Acts of 1925, relating to corporations provides that corporations may be dissolved by adoption of a resolution of the

corporation in the manner provided for in that section after a meeting held by the stockholders pursuant to required notice, a record of which must be filed in the office of the Secretary of State,

together with a list of the names and residences of the directors and officers, certified by the president or a vice-president and the secretary or an assistant secretary and the treasurer or an assistant treasurer. * * *

Section 12 of House Bill 776, Chapter 11829, Laws of Florida, Acts of 1927, provides that:

Every corporation mentioned in Section 1 of this Act shall, at the time of filing with the Secretary of State of the certificate mentioned in said Section 1 or the certificate mentioned in Section 3 of this Act, also file with the Secretary of State a certificate wherein shall be stated the names and post office addresses of each of the officers and directors of said corporation respectively, and shall thereafter, on or before the first day of June of each year, file with the Secretary of State a like certificate, giving like information with reference to the then officers and directors of such corporation.

It will be noted by comparing Section 44 of Chapter 10096, Acts of 1925, with Section 12 of House Bill 776 (Chapter 11829), Acts of 1927, that dissolution of a corporation can only be accomplished by the Secretary of State

* * * being satisfied that the requirements * * * have been complied with.

One of the specific requirements for dissolution is that a copy of the resolution of dissolution, together with a list of the names and addresses of the directors and officers of such corporation, shall be certified by the president or a vice-president, etc., of the corporation proposed to be dissolved. It will be further noted that the Secretary of State must be "satisfied" that such requirements have been complied with.

The only way in which the Secretary of State can be "satisfied" that the certificate of dissolution is filed by proper officer of the corporation as required by Section 44 of Chapter 10096, Acts of 1925, is by referring to his record of what has been filed under Section 12 of Chapter 11829, Acts of 1927, and where Section 12 of Chapter 11829 has not been complied with, in that the corporation has not filed the certificate wherein it shall be stated the names and post office addresses of each of the directors and officers of the corporation, the Secretary of State cannot be legally satisfied that the certificate of dissolution mentioned in Section 44 of Chapter 10096 is signed by the president or vice-president and the secretary or assistant secretary and the treasurer or assistant treasurer of the corporation.

However, it will be noted that the requirement that the Secretary of State must be "satisfied" relates to the status of things which must exist prior to publication by the Secretary of State in a newspaper of the notice required by said Section 44 of Chapter 10096 and where the Secretary of State has begun the publication of such notice or has actually published such notice it would be *prima facie* evidence at least that he was "satisfied" that the requirement of Section 44 had been complied with. The Secretary of State should, therefore, be careful to see that Section 12 of Chapter 11829 (House Bill No. 776) has been complied with before publishing the notice mentioned in Section 44.

The dissolution of a corporation under Section 44, Chapter 11829, does not operate to discharge the corporation from any penalty which may have been incurred by it by violation of House Bill No. 776 (Chapter 11829), although the payment of such penalty is not a necessary prerequisite to a certificate of dissolution being filed provided the corporation complies with requirements of Section 12 of House Bill No. 776 (Chapter 11829) to which the Secretary of State is necessarily forced to look in determining whether the papers filed under Section 44 of Chapter 10096 are properly authenticated by the corporation.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

**SUPERVISORS OF REGISTRATION IN GILCHRIST, GULF, INDIAN
RIVER AND MARTIN COUNTIES—COMMISSIONS OF.**

January 7, 1928.

Dear Sir:

The purpose and intent of Chapter 9271, Acts of 1923, Laws of Florida, amending Section 223 of the Revised General Statutes of Florida, relating to the term of office of supervisors of registration, is that the term of office of the supervisors of registration in the several counties shall expire on the first Tuesday after the first Monday in January, simultaneously with the terms of other county officers.

You should, therefore, issue commissions to the supervisors of registration in the new counties of Gilchrist, Gulf, Martin and Indian River to expire simultaneously with the commissions of other county officers who have been commissioned in such counties.

Trusting this answers your letter of January 6th, requesting my opinion in the matter, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

NOTARIES PUBLIC—AGE.

February 2, 1928.

Dear Sir:

I have your request for my opinion as to whether or not a person under the age of 21 years can legally be appointed and qualify as a notary public under Section 413, Revised General Statutes of Florida and other sections connected therewith.

Section 413 provides that the Governor is empowered to appoint as many notaries public as shall seem necessary. Such persons are required to be commissioned, must give a bond in the sum of \$5,000 conditioned for the due discharge of the said office and also take an oath as prescribed by law.

No age requirement is mentioned in Section 413. Section 414, Revised General Statutes, however, provides that women over 21 years of age shall be eligible to appointment by the Governor as notaries public. It would, therefore, seem that considering the nature of the duties, powers, privileges and obligations of notaries public and the provision that women must be 21 years of age or over that the legislative intent is clearly expressed to the effect that all notaries public must be of the age of 21 years or more.

The office of notary public is also recognized in the Constitution as being an office under the Constitution. See Section 15 of Article XVI of the

Constitution, which provides that notaries public may fill legislative, executive or judicial offices, notwithstanding the provisions of that section to the effect that no person holding or exercising the functions of any office under any foreign government, the United States, any other state or this State shall perform the functions of any other office of the State.

Construing this section of the Constitution in connection with the requirement to give bond the bond not being capable of execution by a person not *sui juris* as well as the obvious intent of the Legislature appearing throughout the laws relating to notaries public, I think the conclusion that I have expressed that no person under 21 years of age, male or female, can be legally appointed to or qualify for the office of notary public, is reinforced.

I return to you herewith the letter received by you from Mr. Raymond R. Tull, P.O. Box 1345, Daytona Beach, Fla., who is 18 years of age and who desires to be appointed a notary public.

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATIONS ORGANIZED UNDER 1925 ACT—DISSOLUTION.

February 20, 1928.

Dear Sir:

I have your letter of February 10th, transmitting form of certificate which your office has been using to dissolve a corporation under the provisions of Chapter 10096, Acts of 1925, Laws of Florida.

Section 44 of the act provides that any corporation deeming it desirable shall have a right to voluntarily dissolve in the manner set forth in that section. This section requires that two-thirds of all the voting power of the stockholders shall by resolution consent to dissolution and copy of such resolution, together with names and residences of the stockholders, certified by the president or vice-president and secretary or assistant secretary and treasurer or an assistant treasurer shall be filed in the office of the Secretary of State, and upon being satisfied that the requirements aforesaid have been complied with he shall issue a certificate that such *Resolution* has been filed and shall cause such certificate to be published in one issue of a newspaper, etc.

The form submitted by you does not refer to the filing of the required resolution but recites merely that an "Affidavit" has been filed. I presume that the complaint against this form is directed particularly against the use of the word "Affidavit" and I would suggest that the form in question be amended so as to recite the fact that a "Resolution" adopted by two-thirds of the voting power of the corporation, together with a list of names and addresses of the directors and officers, certified by the president or vice-president and the secretary or an assistant secretary and the treasurer, or an assistant treasurer, has been duly filed, etc.

I return the form submitted to me with certain indicated changes which may be made, although it would be well to amplify the recital in reference to the resolution beyond what I have indicated.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

MEMBERS OF CONGRESS—QUALIFICATION.

February 21, 1928.

Dear Sir:

I have your request for my opinion as to how and when candidates in the Democratic primary for Congress can become qualified at this time in the absence of a resolution on file in your office of the Congressional Executive Committee, fixing the party assessments for the office of a member of Congress.

It appears upon investigation that there is no Congressional Executive Committee functioning for some of the Congressional Districts of this State.

It is, therefore, a practical certainty that no resolution, making assessments will be filed so far as the coming primary is concerned.

Section 325 of the Revised General Statutes provides that it shall be the duty of each executive committee not later than March 15th of each year in which a general primary election is to be held to adopt a resolution, setting forth what assessments, if any, it will require of candidates and cause a certified copy thereof to be delivered for filing in your office within five (5) days thereafter.

I notice that the State Democratic Executive Committee has attempted to perform the functions of the Congressional Executive Committee and has made a party assessment upon candidates for Congress, evidently upon the theory that because there is no Congressional Executive Committee functioning that such duty devolves upon the State Committee.

I am of the opinion that the law specifically separates the functions of these several committees and that even though the Congressional Committee has not functioned and will not function no other committee can perform its duty for it. Accordingly, candidates for Congress may qualify for the primary by filing in your office their usual qualification papers after the expiration of five days after March 15th without the necessity of showing that they have paid any party assessment as no party assessment will be allowable by law unless resolution providing for same is filed with you within five days after March 15th as provided in Section 325, Revised General Statutes.

If any candidate for Congress desires to file his qualification papers in advance of this final limit I would suggest that you receive same and advise the candidate that they are accepted subject to their liability to pay a party assessment if one is lawfully made in the manner provided by said section of the Revised General Statutes.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS, FOREIGN—REINCORPORATING IN ANOTHER
STATE—CREDIT FOR FEES.

February 23, 1928.

Dear Sir:

I have your letter of the 21st inst., as follows:

I have of record in this office a foreign corporation organized under the laws of the state of Michigan, to which I issued a permit on August 22, 1921, permitting them to transact business in this State, as a foreign corporation.

Now the incorporators of this corporation have formed a corporation under the laws of the state of Delaware, using the same name as that under which they qualified in this State, and the question has arisen as to whether or not the amount of tax paid by the Michigan corporation when it qualified in this State may be deducted in computing the tax on the corporation organized under the laws of the state of Delaware that now wishes to qualify in this State.

It is the intention of the Michigan corporation to transfer all their holdings to the Delaware corporation and the Delaware corporation will assume all liabilities of the Michigan corporation. I understand, of course, that no two corporations with the same name can qualify in this State, but the Michigan corporation has satisfied this office (action based on a previous opinion from your office) of their intention to cease doing business in this State and make all transfers to the Delaware corporation, said certificate being authorized by the board of directors of the Michigan corporation, which, as I understand from advice I have had, is sufficient for the other corporation to qualify.

However, this is not the point. I am merely citing this as the corporations have the same name. The point being, whether the Delaware corporation is entitled to receive credit for the amount that has been paid by the Michigan corporation, in computing the tax on the Delaware corporation.

I would also like to know if the status would be the same if the Michigan corporation consolidated with the Delaware corporation under the laws of the state of Delaware, and said consolidation perfected an increase in the capital stock, and the Delaware corporation filed in this office an authenticated copy of such consolidation, would not the Delaware corporation be entitled to credit paid by the Michigan corporation, when qualifying, in this case due to the consolidation? I mention this as the corporation has the procedure in mind.

Under the circumstances outlined I am of the opinion that if the Michigan corporation, which already has qualified to do business in the State of Florida and received from you a permit to do such business, consolidates with and becomes a corporation under the laws of Delaware, which is a change in form rather than substance, the corporation should be dealt with by your office as if it remained a Michigan corporation and accordingly credit may be given for the amount of fees which has already been paid in by the Michigan corporation for its permit to do business in this State.

My construction of the law is based on the proposition that the statutes contemplate the authorization of a particular corporation to do business in Florida upon certain conditions being complied with and certain fees being paid. The fact that the corporation changes its legal domicile or changes its legal form of organization or makes any other change which does not destroy the identity of the organization as being the same as that which was originally licensed to do business in Florida does not alter the fact that the corporation which was originally licensed to do business is still the same

corporate organization, although possibly doing business under a different name and probably with the removal of its domicile.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

ATTORNEY GENERAL—POLICY OF REGARDING OPINIONS OF
PREDECESSORS.

March 6, 1928.

Dear Sir:

I have your letter of the 29th ult., stating that you have been advised by two previous opinions rendered by my predecessors to the effect that you have no right to receive and file a proposed charter under Chapter 10096, Acts of 1925, which charter embraced corporate powers to act as trustee or surety.

As you are aware, I have taken the position since having assumed the office of Attorney General that I will not undertake to overrule or set aside opinions which have been rendered by my predecessors in office, regardless of whether or not my personal opinion coincides with theirs.

Persons dealing with State officers are entitled to some settled rule to go by and when a specific point has come up and been ruled upon by the legal adviser of the State in a previous case so that persons in past years have had to live up to the law as thus construed I do not believe it to be good governmental policy to have such settled construction changed with the personality of each individual who might temporarily occupy the office of Attorney General.

You are, therefore, advised that inasmuch as you state that the question submitted to me in your letter of February 29th has been already passed upon by ex-Attorney General Rivers H. Buford and ex-Attorney General J. B. Johnson I do not feel it would be proper to do other than to advise you to follow out the opinions upon which you have been acting until the courts decide the contrary to the opinions under which you have been acting in legal proceedings.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CIVIL COURT OF RECORD—COMMISSION OF JUDGE.

March 6, 1928.

Dear Sir:

I have your request of this date for my opinion as to what is the term of office of the judge of the Civil Court of Record for Hillsborough county.

Section 2 of Chapter 8521, Acts of 1921, provides that the judges of Civil Courts of Record shall be appointed by the Governor and confirmed by the Senate and hold office for four years.

In the event an appointment is made when the Senate is not in session such appointment is of a temporary nature only and can only be made by the Governor temporarily until the next session of the Senate. If the Senate then confirms the Governor's appointee, a commission is issued to the appointee for a full term of four years from the date of the confirmation.

It appears that on January 30th, 1926, the Governor made a temporary appointment for judge of the Civil Court of Record of Hillsborough county

by appointing Judge Julian L. Hazard to hold the office temporarily until the Senate met to determine whether or not he should hold a full four-year term. The Senate met in 1927 and confirmed the appointment of Julian L. Hazard and on May 23rd, 1927, he was accordingly given a commission as judge, based on the confirmation of the Senate, for a term of four years. It, therefore, appears that Judge Hazard holds office until May 22nd, 1931, and does not have to become a candidate in the primary of 1928.

You will understand that I am simply construing Section 2 of Chapter 8521, Acts of 1921, as it is written without undertaking to express my opinion as to whether or not it is competent for the Legislature to limit the Governor's power of appointment by requiring the confirmation by the Senate.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATION, FOREIGN, NOT COMPLYING WITH STATE LAW—
DEED.

March 8, 1928.

Dear Sir:

Referring to your request for opinion with reference to letter written to you by W. B. Vanzandt, 4345 Oregon Avenue, Detroit, Michigan, you are advised that the present laws of Florida relative to requiring foreign corporations to obtain a permit to do business in this State do not invalidate deeds to real property executed by such foreign corporations.

A corporation is subject to a penalty for failure to comply with the laws of Florida but its acts are not thereby invalidated.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION, PRIMARY—NAME OF CANDIDATES TO BE PRINTED
ON BALLOTS

March 23, 1928.

Dear Sir:

I have your request for my opinion based upon the letter written to you by Hon. F. M. Ironmonger, Duval County Supervisor of Registration, Jacksonville, Fla., as to what rule shall govern in the printing of names upon the final ballot for the primary election to be held June 5th.

I am of the opinion that the law requires that names of candidates as printed upon the primary election ballots shall correspond with such names as they appear upon the candidate's form of oath provided by Section 326, Revised General Statutes of Florida.

Thus, if the candidate signs his or her name as Mrs. R. C. (Dick) Ingram and D. W. (Jack) Parfitt to the oath of qualification filed with the Clerk of the Circuit Court or with the Secretary of State, as the case might be, the party should carry the name as it appears subscribed to the candidate's oath.

I return herewith letter of Mr. Ironmonger submitted by you.

Very truly yours,

FRED H. DAVIS, Attorney General.

NATIONAL CONVENTION—SELECTION OF DELEGATES

March 29, 1928.

Dear Sir:

The subject of selection of delegates to the national political convention

of the Democratic party is controlled by Section 332 and and Section 356, Revised General Statutes of Florida.

Section 332 provides that the State Executive Committee of any political party may by resolution declare for the nomination of candidates for delegates to national political conventions and upon the adoption of by such committee of a resolution for such nominations or selection of candidates for delegates and service of a certified copy thereof upon the Secretary of State within the time required for filing sworn statements by candidates, the names of all candidates for delegates shall appear on the official primary election ballot.

It will be noted that the number of delegates and what the qualifications for delegates shall be are questions which are committed exclusively to the determination of the State Executive Committee, and I am of the opinion that it is within the power and province of the State Democratic Executive Committee to provide for the selection of delegates to the national Democratic convention in such manner that the same shall consist of four (4) men and four (4) women, to be selected in the manner provided for in the resolution adopted by the committee as the same has been filed in your office.

The question then arises as to what effect the following provision of Section 356 has upon the determination of what candidate is elected:

Provided, however, that candidates for delegates to national conventions shall not be nominated by groups, but by a plurality vote.

My interpretation of the resolution adopted by the State Democratic Executive Committee is that two separate kinds of delegates are provided to be selected in the primary and that the above provision of Section 356, prohibiting the nomination by groups, only refers to the nomination by groups within the same class of delegates.

The purpose of the proviso to Section 356 was to take the delegates out of the purview of the first part of that Section which relates to the grouping of candidates for the same office where two or more are to be nominated.

It, therefore, appears that the legal effect of the law is to allow the State Democratic Executive Committee to regulate its party delegation in any manner that it sees fit and the plurality vote mentioned in Section 356 means the plurality vote cast according to the classification of delegates as made by the committee.

Trusting this answers your inquiry of this date for my opinion in the matter, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATIONS—REINCORPORATING UNDER 1925 ACT—REDUCTION OF CAPITAL STOCK

April 5, 1928.

Dear Sir:

I have the letter of Mr. W. H. Rogers, attorney at law, Jacksonville, Fla., dated March 23rd, submitted by you, relating to procedure for reincorporating a corporation under the Act of 1925 and at the same time reducing its capital stock, the corporation in question having been incorporated prior to the 1925 Act.

In reply to your request for my opinion about the matter, I beg to advise that I construe the 1925 Corporation Act as authorizing the surrender of the old charter of the corporation and the acceptance of a new charter in lieu

thereof at one and the same time, same to be accomplished under the method outlined for reincorporating.

I am, therefore, of the opinion that in such a reincorporation under the 1925 Act the capital stock may be reduced without securing from the State Comptroller his certificate that in his judgment the ability of the corporation to meet its outstanding indebtedness and liabilities will not be impaired by the reduction of capital as is required of corporations under Section 4086, Revised General Statutes, 1920.

I construe the new Act of 1925 as being a remedial one for purposes of cutting out as much red tape as possible and its purpose will be defeated by holding that provisions of the old law should continue to be observed except where such provision is expressly re-enacted in the 1925 Act.

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATIONS—INCREASE IN CAPITAL STOCK—CREDIT FOR TAX

April 14, 1928.

Dear Sir:

I have your letter of March 31st, reading as follows:

I am confronted with a situation on which I would like your advice.

Where a corporation has decreased its capital stock, and later on decides to increase capital stock beyond the amount originally authorized, before the decrease, would they be required to pay charter tax, beginning with capital as decreased, or would they be required to pay on the additional above what was first stated in the original certificate?

I assume that your letter refers to a case arising under Chapter 10096, Acts of 1925. Section 56 of this Act contains the following provision:

All fees therefor paid by said corporation or corporations with respect to the shares authorized prior to such amendment or consolidation shall be deducted * * *

from the amount which the Secretary of State is required to demand and receive for the use of the State.

I am of the opinion that the effect of this provision is to entitle the corporation to credit for any shares of stock for which it can show that it has already paid a fee to the State and, accordingly, the amount of charter tax should be so computed as to allow credit for any charter tax which has been paid for during the life of the corporation in cases where the capital stock is increased so as to require the payment of an additional charter tax.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS—RESIDENT AGENT ACT

April 28, 1928.

Dear Sir:

Section 12 of Chapter 11829, Laws of Florida, Acts of 1927 (House Bill No. 776), provides that every corporation mentioned in Section 1 of the Act shall at the time of filing its certificate with the Secretary of State also file a certificate, stating the names and post office addresses of each of the officers and directors of the said corporation respectively.

I construe this as a requirement that not only the names and post office addresses of the officers shall be given, but the title of each officer shall be shown. In short, the requirement that the names and post office addresses of each of the officers and directors shall be filed means that the name and title and address of the officer shall be stated. If this were not true, the purpose of the Act—which is to enable service to be perfected upon corporations—will be almost entirely defeated.

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATIONS, FOREIGN—COMMON CARRIERS—TAX

July 30, 1928.

Dear Sir:

I have your request for my opinion as to whether or not you should issue a Florida permit to the St. Louis, San Francisco Railway Company, a corporation organized under the laws of Missouri, with an authorized capital stock of \$450,000,000, and which is engaged in operating in interstate and intrastate commerce as a common carrier by railway, a system of approximately five thousand miles of railroad located in divers states of the Union, of which only 100 miles, or thereabouts, lie within the State of Florida, said permit to be issued in consideration of the sum of \$250.00 tax, and a \$5.00 filing fee, which has been tendered to you by counsel for the railway company.

I am of the opinion that the Florida statutes fixing an unlimited tax on the basis of the authorized capital stock of foreign corporations seeking to do business in Florida are not legally enforceable against a foreign corporation which is engaged in the business of a common carrier by railway, the capital of which corporation represents both its interstate and intrastate transportation business.

In several cases the United States Supreme Court has laid down the rule that the license fee of a given percentage of the entire authorized capital of a foreign corporation doing both a local and interstate business in several states, although declared by the state imposing it to be merely a charge for the privilege of conducting a local business therein, is essentially and for every practical purpose a tax on the entire business of the corporation, including that which is interstate, and on its entire property, including that in other states, because the capital stock of the corporation represents all its business of every class, and of its property wherever located, and when tested must be tested by its substance, and essential and practical operation rather than its form. See *International Paper Company vs. Massachusetts*, 246 U. S. 135; *Western Union Telegraph Co. vs. Kansas*, 216 U. S. 1; *Looney vs. Craine Co.*, 245 U. S. 178.

Cases involving a permit to a foreign railroad corporation to file its charter and obtain a permit to do a local business in this State are readily distinguishable from the class of cases in which it has been held that your office should collect a permit tax on the basis of their entire authorized stock, and it is, therefore, my advice to you that the proposed charter filed with you by the Frisco Railway Company be received, filed and accepted in consideration of the sum of \$255.00 tendered therewith.

Section 4052, Revised General Statutes, formerly provided a tax based upon the authorized capital stock of a foreign corporation which limited the

aggregate amount thereof to not exceed \$250. Subsequent statutes have amended this provision and removed the \$250 limitation.

The Supreme Court of the United States has held that the state may impose a tax based on the authorized capital stock of a foreign corporation even when engaged in interstate commerce, provided there is a reasonable limitation in amount.

Therefore, it appears that Section 4052, Revised General Statutes of Florida, is still legally applicable to those classes of foreign corporations which are engaged principally in operating in interstate commerce, and which may do some local business, and accordingly I advise that the tax which has been tendered on the basis fixed by Section 4052, Revised General Statutes, be accepted in this instance, as I am convinced the attempt to collect on the entire \$450,000,000 authorized capital stock of the Frisco Railway Company would not be sustained in the courts.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

CORPORATIONS, FOREIGN—AMENDMENT TO CHARTER.

August 10, 1928.

Dear Sir:

I have your letter of August 10th, in which you advise me that the Travelers Insurance Company was doing business in Florida prior to 1907 when Chapter 5717, Acts of 1907, approved June 1st, 1907, was enacted, and is therefore entitled to the benefits of Section 6031, Compiled Statutes of 1927, which provides that any foreign corporation transacting business in the State of Florida at the time the aforesaid act was passed shall not be affected by the act but that such foreign corporation afterwards increasing its capital stock shall comply with the provisions of Section 6028, Compiled Statutes of 1927.

Section 6028, Compiled Statutes of 1927, which was Section 3 of Chapter 5717, Acts of 1907, provides that if the charter or articles of incorporation of any foreign corporation shall be amended after a permit has been issued to it, such corporation shall, within thirty (30) days thereafter file a duly authenticated copy of the amendment in the office of the Secretary of State, who shall issue to the corporation a certificate of the filing but if the amendment is one increasing the capital stock he shall not deliver the certificate until he shall receive from the corporation, for the use of the State, a sum equal to that which such corporation would have been required to pay if it had been a corporation increasing its capital stock under the laws of Florida.

I have carefully studied the proposed amendment of charter submitted to you by the Travelers Insurance Company, with its application for permission to file same in consideration of the payment of a fee of \$1,875 for so doing.

From an examination of the charter, it appears that on June 1st, 1907, when Chapter 5717, Acts of 1907, was passed, the authorized capital stock of said Travelers Insurance Company was Ten Million Dollars.

It further appears that by virtue of an amendment approved April 13, 1921, the authorized capital stock of said corporation was Twenty-five Million Dollars.

In the case of State ex rel. American Bakeries Co., v. Crawford, Secre-

tary of State, decided by the Supreme Court of Florida on July 28, 1925, 105 So. 446, the Supreme Court held that the applicable fee which should be charged foreign corporations for filing their charters are those fees which are applicable to domestic corporations on the date the foreign charter is proposed to be filed.

In other words, the Supreme Court said that the language of the statute was to the effect that the Secretary of State shall not deliver to a foreign corporation a permit until he shall have received from it for the use of the State a sum equal to that which the said corporation would have been required to pay as a charter fee if it had been incorporated under the laws of this State relative to the charter fee that is required of local corporations that are incorporated at the time the permit is delivered to the foreign corporation.

Inasmuch as the Travelers Insurance Company did *not* file the amendments to its charter within 30 days after the capital stock was increased, its right to do business in the State of Florida stands revoked until the provisions of the law are complied with. See Section 6028, Compiled Statutes of 1927.

It is, therefore, necessary for the Travelers Insurance Company to now comply with whatever law of the State of Florida is in force with reference to the applicable charter tax on the amendment, which appears to have been made on April 13th, 1921, increasing the authorized capital stock of the corporation from Ten Million to Twenty-five Million Dollars.

I am, therefore, of the opinion that under the construction of our corporation statute as made by the Supreme Court of this State, when considered in connection with the amended charter proposed to be filed, that you should require the Travelers Insurance Company to pay to you before issuing a permit to do business in this State under Section 6028, Compiled Laws of 1927, the applicable charter tax which would be due by said corporation on its authorized capital stock of Twenty-five Million Dollars less whatever credit may be due to it for Ten Million Dollars of authorized capital stock, which was the authorized capital stock of the corporation on June 1st, 1907, and which is not subject to tax.

I have read with interest the comments made by Mr. William Brosmith, vice-president and general counsel of the Travelers Insurance Company, in which he contends that the Florida statute is likely invalid but I think that his position on this point is overruled by the recent opinion rendered in the case of *Cudahy Packing Co., v. Hinkle*, Secretary of State, decided January 9, 1928, reported in 24 Fed. 2nd Series 124, where the Court held that a tax imposed by a state on a foreign corporation doing business therein, whether as a filing fee or an annual license tax, measured by the authorized capital stock, does not render it invalid as a burden on interstate commerce as applied to a corporation doing both interstate and intrastate business in the state, though much the greater part of it is interstate; nor as a tax upon property beyond the jurisdiction of the state if the tax is reasonable in amount and bears a reasonable relation to the amount of intrastate business done.

It does not appear to me that under the rule announced in this case the exaction of the amount of the fee which would be charged under the rule

hereinbefore set out would be unreasonable when considered in relation to the amount of business done by the Travelers Insurance Company in the State of Florida.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

NOMINATIONS—CERTIFICATE OF.

September 10, 1928.

Dear Sir:

I have your request for my opinion as to how the Secretary of State should certify nominations under Section 259, Revised General Statutes of Florida, particularly with reference to whether or not such certifications can be made by one certificate which will embrace the names of all nominees of all the parties who have filed nominations of candidates as required by law.

I am of the opinion that under Section 259 the names of all nominees can be legally embraced in one certificate and for your information, and at your request, I have prepared an appropriate form for that purpose, which is submitted herewith.

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATIONS HAVING PAR AND NO PAR VALUE STOCK; AFFIDAVITS.

September 20, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of the 17th instant.

Under Section 4054, Revised General Statutes of Florida, as amended by Chapter 9123, Acts of 1923, Laws of Florida, it is provided that if the corporation be one with shares of capital stock "of no par value only" in that event the affidavit filed by its treasurer must show that not less than \$1,000 of capital stock has been paid in in money.

As I construe this statute, the provision requiring that affidavit show that not less than \$1,000 be paid in in money means exactly what it says and that is that the \$1,000 in question must be represented by money paid in as distinguished from property or other items of the value of \$1,000.

You will notice, however, that the requirement in question is limited to corporations which have stock of no par value "only."

If a corporation has both par value stock and stock of no par value, the requirement as to paying in \$1,000 in money has no application at all. In such case, the only affidavit that is required to be filed is that 10 percent of the capital stock has been paid in.

The question then arises as to what is meant by 10 percent of the capital stock of a corporation which has stock having both a par value and a no par value. In my mind, this means 10 percent of the face value of the capital stock having a par value plus 10 percent of whatever value the corporation has fixed upon the shares which have no par value.

A corporation may value shares having no par value at whatever it pleases. For the purpose of computing the 10 percent of such class of capital stock a corporation should place a value upon such shares of no par value and should compute the required 10 percent, upon the basis of the valuation so placed.

If a corporation decides that the value of the no par value stock is to be nominal only, the effect of such a case is to practically eliminate such no par value stock from the computation.

If there are 7,500 shares of no par value stock provided for, 10 percent of such no par value stock would be 10 percent of the authorized number of shares or, in other words, 750 shares of no par value stock. Such 750 shares of no par value stock would have to be subscribed to before the corporation would be authorized to begin business in addition to the 10 percent of the stock having a par value in a corporation which had stock of both a par value and a no par value but the amount which would have to be paid in as the purchase price of 750 shares of no par value stock would be a matter which would rest within the powers of the corporation to determine in fixing the value of such stock for the purpose of its own determination.

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATION—REINCORPORATION OF—CERTIFICATE.

October 10, 1928.

Dear Sir:

I have your request of October 2nd, for my opinion as to whether or not the signature of the president or secretary, affixed to a certificate of reincorporation, as provided in Section 64 of Chapter 10096, should be acknowledged before some officer authorized to take acknowledgments.

The context of the law in question clearly establishes the proposition that a reincorporation is nothing more nor less than a granting of a corporate charter under the new act in exchange for one surrendered that has been granted under the old act.

Acknowledgment is expressly required for all original papers filed under Chapter 10096, and while the statute does not expressly so provide in *haec verba* that a certificate of reincorporation shall be acknowledged before some officer authorized to take acknowledgments, I think it is clearly implied from the context of the act that a certificate of reincorporation should be authenticated in the same manner as an original certificate of incorporation, i. e., the signatures of the president and secretary affixed to a certificate of reincorporation as provided in Section 64 of Chapter 10096 should be properly acknowledged before some officer authorized to take acknowledgments.

Very truly yours,

FRED H. DAVIS, Attorney General.

CORPORATION LAW—CORPORATION MUST FILE AMENDED CERTIFICATE NAMING NEW AGENT.

Dear Sir:

October 16, 1928.

I have your letter of the 10th instant.

It is my opinion that under the provisions of Chapter 11829, Acts of 1927, otherwise known as House Bill No. 776, a resident agent who has been appointed under the provisions of said act cannot, after acceptance of the appointment, file a certificate of resignation.

The only way he can escape his responsibility is to have the corporation file an amended certificate naming a new agent and place of business for service to thereafter stand in lieu of the agent specified in the certificate on file.

To hold otherwise would mean that the 1927 act is of no value for the purpose for which it was passed.

Very truly yours,

FRED H. DAVIS, Attorney General.

**CORPORATION LAW—CERTIFICATE OF INCORPORATION—
REQUIREMENTS.**

Dear Sir:

October 25, 1928.

In compliance with your request of October 19th, for my opinion concerning the validity of certain provisions found in the proposed certificate of incorporation of Indian River High Shores Company, I beg to advise that I am of the opinion that Article 3 of the proposed charter should be so revised as to clearly state in the charter the information required by paragraph 3 of Section 6529, Compiled Laws of 1927, which provides that the certificate of incorporation should show, first, maximum number of shares with nominal or par value; second, maximum number of shares without nominal or par value; third, classes of stock; fourth, distinguishing characteristics of each class, if any, and to which the same are divided, and fifth, the nominal or par value of shares of stock other than shares which it is stated are to have no nominal or par value. In other words, the certificate of incorporation should fully describe the shares of stock which are to be issued, and while certain flexible provisions may be incorporated allowing stock to be issued in the alternative this does not authorize the setting up of vague and indefinite provisions for issuance of stock by a delegation of powers to the board of directors which would, in effect, be a delegation of power to the board of directors to change the fundamental basis upon which stock in the corporation is to be issued.

Yours very truly,

FRED H. DAVIS, Attorney General.

**CORPORATION FOR PROFIT—DATE WHEN DISSOLUTION
EFFECTIVE.**

Dear Sir:

December 6, 1928.

Your inquiry of December 4th is answered by the following quotation from Section 44, Chapter 10096, Acts 1925, Laws Florida, relating to dissolution of corporations for profit.

Upon the filing in the office of the Secretary of State of an affidavit of the manager or publisher of the said newspaper that said certificate (of dissolution) has been published once in said newspaper the corporation shall be dissolved.

It will be seen from the foregoing quotation that a corporation is not dissolved until the Secretary of State has ascertained by examining the proof of publication that notice of dissolution has been properly published but only becomes dissolved when such proof is filed with and accepted by the Secretary of State as being a sufficient compliance with the statute.

I am, therefore, of the opinion that the date which should be inserted in the form of certificate prepared, showing the dissolution of corporations for profit under Section 44, Chapter 10096, should be the date on which the Secretary of State receives and files affidavit of publication.

Very truly yours,

FRED H. DAVIS, Attorney General.

COMPTROLLER.

SPECIAL ROAD AND BRIDGE DISTRICT—IF AUTHORIZED UNDER
LAW TO SIGN CERTAIN AGREEMENT.

March 7, 1927.

Dear Sir:

Your favor of the 7th inst., has been received.

I note the following facts:

1st. That the Atlantic Gulf Special Road and Bridge District was created by Chapter 11127, Laws of Florida, Acts of 1925.

2nd. That under the provisions of this act the district proceeded to issue bonds.

3rd. That the funds arising from the sale of the bonds were deposited in two banks with the understanding that each bank would give \$125,000 depository bond.

4th. That one of these banks gave the required bond and the Farmers Bank & Trust Company of Vero Beach, Florida, in which a portion of this bond money was deposited, failed to give the depository bond and afterwards closed its doors.

5th. That this Farmers Bank & Trust Company is now desirous of reopening and that as a condition precedent to its reopening it has to have an agreement by each and every depositor whereby 55 percent of the deposits are frozen covering a period of two and one-half years and 45 percent of the deposits are practically written off or the payment thereof depended upon whether or not the amount could be collected out of the assets of the bank.

The question you ask me is as to whether or not the trustees of the Atlantic Gulf Special Road and Bridge District would be authorized under the law to sign such an agreement and thus freeze 55 percent of the funds of the district in said bank and practically write off 45 percent.

Upon examination of the law creating this special road and bridge district we find the following provision:

Section 22 of this act provides:

The said board of bond trustees shall choose one of its members as chairman and one of its members as secretary and one of its members as treasurer, or at its pleasure may provide that the offices of secretary and treasurer shall be held by the same person and the person so chosen shall serve in the respective offices until the next election for members of said board.

You will note by this provision that a treasurer was provided for this district. In Section 10 of this act there is this provision:

* * * and the treasurer of said district shall receive and hold the proceeds of the sale of said bonds, as well as the sinking fund for the payment of the interest and principal thereof. The bond of the treasurer of said district, however, shall at all times be of sufficient amount to cover and protect all of said funds and all other funds of said district in his custody or control.

Section 16 of this act makes the further provision:

The board may select a depository or depositories in which the funds of said board shall be deposited by the treasurer, but such

depository shall be a bank or trust company organized and subject to the supervision under the laws of the United States or of the State of Florida; and such funds shall be held by such depository upon such terms and conditions as the board may deem just and reasonable and upon such terms as to security as the board and treasurer of the district may deem proper.

We have not been advised as to the bond of the treasurer of the district or as to whether or not he gave any bond at all. If the treasurer gave the bond as required by the act then the district is fully protected for the money placed in this bank. In your letter you advised that a bond to secure the deposit in this bank was required and demanded but that such bond was never given and that the bank closed with the money on deposit and without security. It is my opinion that neither the board of bond trustees of this district nor the treasurer of the district could bind the district by an agreement to freeze or compromise this deposit. Unless such an act was authorized by a decree of a court I am inclined to think it would be null and void. There is nothing in the act giving such authority.

We appreciate the fact that it might be decidedly to the interests of the district and to the interests of the community to have this agreement for the reopening of the bank given but with all this, I am unable to find authority for such an act. If such a contract were made it would not relieve the trustees of the district nor the treasurer of the district from any liability that might exist against them under the law.

You mention in your letter that the assets of the bank might be impressed with a trust in favor of the district to the amount of deposits of the district held by such bank. This deposit was a public fund and the law prescribes how it should be held and administered. The bank was on notice that it should have given a bond if required by the trustees of the district and that until such bond was given it had no legal title to the money and was not authorized to commingle it with the general assets of the bank. As to whether or not the assets of the bank are impressed with this trust is a legal question that will have to be adjudicated by the courts.

I am quite satisfied that it is not entirely proper for me to undertake to render an opinion or advise any course of action in this matter. Any opinion rendered by me is gratuitous and without binding effect and would not authorize or warrant anyone to act on that opinion.

Very truly yours,

J. B. JOHNSON, Attorney General.

MOTOR VEHICLES—TRUCKS—USE BY PRIVATE CORPORATIONS.

March 24, 1927.

Dear Sir:

I am in receipt of your favor of the 23rd inst., asking my opinion with reference to motor trucks employed by the National Biscuit Company, as to whether or not they should be classed as trucks "For Hire."

It is my opinion that these trucks should not be classed as "For Hire." I do not think the law contemplated that they should be as they are purchased for a special and specific purpose and are not used "for hire" under the common acceptance of the term.

Very truly yours,

J. B. JOHNSON, Attorney General.

TAX COLLECTORS—COMMISSIONS.

April 8, 1927.

Dear Sir:

I am in receipt of your favor of the 7th inst., with enclosure of letter from Hon. E. W. Hayes, tax collector, Bradford county, requesting my opinion as to whether or not he is entitled to 2 percent on the collection of taxes to pay the interest and raise the sinking fund on county bonds and as to whether or not he is entitled to commissions on such collections at the rate of 2 percent instead of $1\frac{1}{2}$ percent allowed by law for collection special taxes.

You will appreciate the fact that the statute is not at all clear on this question. In counties having a valuation of less than five million the tax collector receives 2 percent on the balance of collections for collecting county taxes and $1\frac{1}{2}$ percent for collecting special taxes. I am of the opinion that the courts would construe taxes to provide the interest and sinking fund for county bonds are special taxes and would come under the $1\frac{1}{2}$ percent classification.

Very truly yours,

J. B. JOHNSON, Attorney General.

COURT REPORTER—MAY BE EMPLOYED BY LEGISLATURE

April 15, 1927.

Dear Sir:

I am in receipt of your favor of the 13th inst., as follows:

Under Section 4 of Chapter 8566, Acts of 1921, a salary of \$1200.00 per annum is provided for court reporters of this state. It seems that this salary is paid in lieu of per diems in criminal cases tried in the circuit courts.

As there are one or two instances where court reporters have been employed as clerks in the House of Representatives in some capacity, I am confronted with the question as to whether or not the rule of public policy will prevent the paying of salaries or compensation from the two sources, as both, of course, will be paid by the State.

While it is true that circuit court reporters draw a monthly salary of \$100, still this is not a position that demands all of their time. They would be authorized to take other employment while not actively engaged in the work of the courts. On the other hand, they should at all times hold themselves in readiness to meet the demand of court work.

I find nothing in the Constitution or in the statutes that prohibits one from drawing compensation for more than one line of service or employment. Of course, where one's employment and compensation are provided for they are supposed to devote their entire time to the duties of the employment during working hours.

Section 15, Article XVI of the Constitution, provides:

No person shall hold, or perform the functions of, more than one office under the government of this State at the same time.

I cannot construe that as applying to clerical positions and employment that cannot be classed as an office. Under the law as it exists it is my opinion that a court reporter could take employment with the Legislature provided it does not require him to neglect the duties of his employment. If he in any manner neglects his duties he would be subject to removal by the Governor.

Very truly yours,

J. B. JOHNSON, Attorney General.

GASOLINE TAX

April 22, 1927.

Dear Sir:

I am in receipt of your favor of the 21st inst., as follows:

I am transmitting herewith a letter from the Gulf Refining Company, Metropolitan Building, Atlanta, Ga., and also a letter from the Sinclair Refining Company, 123 Walton Street, Atlanta, Ga., and would be pleased to have your opinion, first, as to whether or not a tank car of gasoline held in Jacksonville and which has lost its interstate status can be shipped as and in the manner stated in the letter of the Gulf Refining Company from Jacksonville, without the wholesale dealer that shipped the car paying the four cents per gallon gasoline tax, and second, as to whether or not gasoline can be sold in the State of Florida to any government agency without subjecting the wholesale dealer to the payment of the tax of four cents per gallon.

I am presenting the latter question for the reason that the writer of the letter asked that it be submitted to you, and in the case of the Gulf Refining Company, that company took exception to the position taken by this office, that the gasoline was sold in Florida.

I note the letter addressed to you by Mr. Frank G. Driscoll, attorney for the Sinclair Refining Company, and also letter of Mr. G. R. Wilby, assistant district sales manager of the Gulf Refining Company, Atlanta, Ga.

You request my opinion:

First—As to whether or not a tank car of gasoline held in Jacksonville and which has lost its interstate status can be shipped as and in the manner stated in the letter of the Gulf Refining Company from Jacksonville without the wholesale dealer who had shipped the car paying the four cents tax.

Section 1 of Chapter 10025, Acts of 1925, provides:

Every dealer in gasoline or other like products of petroleum, under whatever name designated, in this State, shall pay a license tax of \$5.00 to the State and in addition thereto four cents per gallon for every gallon of gasoline or other like products of petroleum sold by him and upon which the tax herein provided has not been paid, or the payment whereof has been assumed by a person preceding him in the handling of said block of products.

If the tank car of gasoline was not owned by a dealer in this State and was not broken out of the car in transit and was only transported through this State in interstate commerce, then it would not be subject to the four-cent tax. Only dealers in this State are required to pay the four-cent tax on all gas actually sold in this State. Any gasoline in this State that has lost its interstate character and which would be subject to the tax if sold to a purchaser outside of the State, the sale having taken place in Florida, would be subject to the four-cent tax. It would have to be clear though that the product so sold was not in transit in interstate commerce and that it had lost the protection given to interstate commerce by the Federal laws.

If the facts set up in Mr. Wilby's letter are correct, then the tank of gasoline would not be subject to the four-cent tax.

Answering your second question "as to whether or not gasoline can be

sold in the State of Florida to any government agency without subjecting the wholesale dealer to the payment of the tax of four cents per gallon":

There is absolutely no exemption in favor of anyone from the payment of this tax on gas sold in the State of Florida. Purchasers of gas could order their gas from dealers beyond the limits of the State and would not be required to pay the tax unless the gas were resold in the State. Neither the Federal Government, its agencies, the State Government, nor any county or municipality is exempt from the payment of this tax, if the gas is purchased by them in the State of Florida.

Very truly yours,

J. B. JOHNSON, Attorney General.

TAX COLLECTOR—LIABILITY FOR NEGLIGENCE IN DEPOSITING
CHECKS FOR TAXES

May 16, 1927.

Dear Sir:

I am in receipt of your favor of the 14th. inst., as follows:

A tax collector received checks in payment of taxes and deposited same in due course through the regular banking channels for collection. He never received final return credit for the checks, as the bank on which drawn closed before the draft sent in payment was cleared. The individual checks having been received by the closed bank prior to its closing were charged to the individual accounts of the drawers. However, the tax collector did not receive final return on the same. The tax collector has requested me to give him a ruling on the matter which would help him in convincing the parties drawing the check that they had not paid their taxes. The tax collector having probably issued receipts at the time he received the checks was in the position of having to cancel the receipts. I am inclined to write him that he is correct in taking the position that he never received final payment on the checks tendered in payment of taxes, and that he will have a right to cancel the receipts he issued. Section 4728 of the Revised General Statutes, I believe, enunciates the principle which would govern in the case of a tax collector as well as the case of a collecting bank.

Will you kindly advise me if I am correct in this?

Where the tax collector takes a check in payment for taxes and deposits same for collection with all reasonable dispatch and the bank on which this check is drawn closes before the check is presented for payment, the maker of the check is still liable for the amount of his taxes.

The law contemplates that tax receipt shall only be issued to those who have paid the amount of the taxes.

It is my opinion that the tax collector, if he had used all reasonable dispatch in passing the check for collection, would have the right to cancel out this tax receipt and advertise the lands for sale unless the amount of the check is made good. If the tax collector, or the collecting bank, was negligent and held this check out an unreasonable length of time and by reason thereof the paying bank was closed and the check not paid, then the loss would be on the tax collector, this, provided that the check would have been paid if it had been handled with all reasonable dispatch.

The law on this question is that where the payee holds the check out an unreasonable length of time and for this reason the check is not paid but would have been paid if handled with dispatch, the payee stands the loss. Otherwise the maker of the check is still liable for the amount of same.

Very truly yours,

J. B. JOHNSON, Attorney General.

**BUILDING AND LOAN ASSOCIATIONS—1927 AMENDMENT NOT
RETROACTIVE**

June 9, 1927.

Dear Sir:

Your communication of June 3rd, addressed to Hon. J. B. Johnson, Attorney General, relative to the effect of the recent statute governing building and loan associations, will be answered by me as his successor.

It is my opinion that the effect of the 1927 amendment to the building and loan association law is to operate prospectively only and not retroactively; and that the prohibition of Section 16 of Chapter 10028, Acts of 1925, as amended by Section 12 of the Act of 1927 does not extend to transactions relative to premiums on stock issued, which transactions had their inception before the 1927 law was approved by the Governor.

I am, therefore, of the opinion that the Tropical Building and Loan Association, which was incorporated under the old law, can be legally allowed to proceed under any contract had with its sales agent relative to sales of shares of stock at a charge of \$5.00 a premium thereon if such contract had its inception prior to the passage and approval of the 1927 law even though the former ratification thereof in writing was not executed until after the new law took effect.

As to all transactions had, the inception of which was after May 7, 1927, the date the new law was approved, I am of the opinion that the limitation of Section 12 of the new law relative to claims on stock will have to be applied.

Very truly yours,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—TRUCKS "FOR HIRE"

June 11, 1927.

Dear Sir:

I beg to acknowledge the receipt of your letter of June 10th, requesting my opinion as to whether certain truck owners are liable for a "For Hire" license tax on motor vehicles in this State where such trucks are operated by owners who have entered into a written agreement with the road contractor whereby in addition to the hauling of commodities, the truck owner agrees to spread the commodities over a road surface to a certain depth and receives pay for the hauling as well as the spreading at so much per square yard, etc.

In reply, I beg to advise that under Section 1006, Revised General Statutes, as amended by Chapter 10187, Acts of 1925, any motor vehicle used for transporting commodities or materials for compensation or which is let or rented to another for a consideration, is liable to, and should be required to, have a "For Hire" license tag issued under the laws of this State and that such requirement is not dispensed with or affected by any agreement which may be made by the owner or operator of a motor vehicle to perform other

services in addition to the hauling for a gross consideration, which embraces compensation for the hauling.

In short, if any part of the compensation received by the owner of the motor vehicle is received for hauling commodities or materials the motor vehicle in question is being operated as a "For Hire" motor vehicle and should be licensed accordingly.

The fact that the compensation might be arranged for by written contract in such manner that other services and hauling is paid for at a stipulated or on a stipulated basis does not alter or change the fact that if any part of the consideration or compensation received is for the haul of a commodity, the vehicle should be considered as a "For Hire" motor vehicle.

I am also of the opinion that it is even the power of the Comptroller under the last proviso of Section 1011 of the Revised General Statutes of Florida, as amended by Chapter 10182, Acts of 1925, to consider the facts of each case and to determine the proper classification of any vehicle required to be registered under the motor vehicle law and that whenever the Comptroller, in the exercise of this power, finds that a device is being resorted to in an attempt to evade the requirement of the law relating to "For Hire" licenses, the Comptroller has a right to look at the substance of the transaction and from that substance to determine the proper classification of any vehicle required to be registered.

Therefore, in any case where the Comptroller finds it a fact that a motor vehicle is being used for transporting commodities or materials for compensation although under a verbal or written contract which disguises or attempts to disguise the true nature of the actual transaction being engaged in, the Comptroller has power under the last proviso of Section 1011 of the Revised General Statutes to require the registration of such motor vehicle under the "For Hire" classification of the law notwithstanding any mere formal written or verbal contract which may have been entered into between the parties governing the use of such motor vehicle in the performance of other services in connection therewith.

Trusting that this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

GASOLINE TAX—WHAT CONSTITUTES DEALER.

July 7, 1927.

Dear Sir:

I am in receipt of your letter of July 6th. * * * relative to the subterfuge of the * * * Company with the City of Miami to avoid the payment of the State Road Tax of five cents per gallon on gasoline.

In my previous letter to Mr. Pledger, as supervising inspector in the Department of the Commissioner of Agriculture, I was not called upon to render any opinion concerning the liability upon this imported gasoline for the tax imposed for State road purposes, as the only inquiry submitted to me by Mr. Pledger was whether or not this company should be required to pay the inspection tax on this gasoline.

Section 1 of Senate Bill No. 92, passed by the Legislature of 1927, provides that every dealer in gasoline, or other like product of petroleum, under whatever name designated, in this State shall pay a license tax of \$5.00 to

the State and also four cents per gallon in addition thereto for every gallon of gasoline, or other like product of petroleum, sold by him, and upon which the tax therein provided had not been paid, or the payment thereof had not been assumed by persons preceding him in the handling of such lot of products.

The term *dealer*, as used in Section 1 of said law, in my opinion, embraces and comprehends a transaction such as that described as existing between the * * * Oil Company and the City of Miami. I am also of the opinion that the * * * Oil Company in selling to the City of Miami gasoline which is received in this State, and then held in storage and distributed from time to time as needed, as described in the letter from * * * to Hon. Nathan Mayo, dated June 21, 1927, is a dealer in gasoline, and as such is liable for the tax imposed by said Senate Bill No. 92, which was approved by the Governor on May 21, 1927, and that you as Comptroller should demand from said company the payment of said tax, and in the event the tax is not paid that you take appropriate proceedings under the law to enforce the collection of the same.

I assume that the defense of this company will be that the gasoline is imported on an interstate movement, and, therefore, is not subject to the tax under the provisions of Section 9 of the act in question which will make such tax not applicable to products which, at the time of sale, had not been divested of their interstate character.

In the event the oil company resists payment of the tax, it may be necessary to indulge in litigation with it to establish the true facts of the case, and to ascertain whether or not as a matter of law the arrangement thus provided for between the City of Miami and the oil company is a subterfuge to evade the law levying the tax on said products. However, it is apparent that the * * * Oil Company is a *prima facie* dealer of gasoline in the State of Florida in connection with this transaction, and the burden of proving an exemption of the tax is upon it, and, until such burden is met and disposed of by a court of competent jurisdiction in this State, I would advise you to insist upon the collection of the tax upon the gasoline in question, and if not paid to resort to whatever legal or other summary proceedings to enforce the collection as may be deemed necessary.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GASOLINE TAX—DISBURSEMENT.

July 20, 1927.

Dear Sir:

Section 4 of Chapter 12037, Acts of 1927, provides:

All moneys derived from the license tax imposed by this act shall be subject to the payment by the Comptroller of the expenses incident to the administration of this act, including postage, clerical aid and costs and expenses incident to litigation, and shall be held in the treasury in a special fund to be credited to the account of the Comptroller who shall draw his warrant upon the treasury against said fund from time to time for the payment of all such expenses as may be incurred by him incident to the administration of this act, etc.

The effect of this provision is to make a standing and continuing appropriation out of the moneys derived from the gasoline tax, out of which shall be paid all costs and expenses incident to litigation, and I am of the opinion that among the costs and expenses of litigation should be included the cost incurred by the Comptroller in making any special investigation concerning a reported alleged tax delinquency such as that referred to in your letter submitted to me under date of July 19th, 1927, referring to reported gasoline tax evasions and delinquencies at Miami, Florida. This would include payment of salary and expenses of the investigator employed in making any investigation "incident to" possible or prospective litigation.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

LEGAL NOTICES—CHARGES FOR PUBLICATION.

August 3, 1927.

Dear Sir:

I have your letter of August 1st, reading, in part, as follows:

The Legislature of 1927 passed an act, House Bill No. 732, which was approved June 6th, 1927, amending Section 2944 of Revised General Statutes of Florida, in relation to the publisher's charges for publishing official notices or legal advertisements authorizing the publisher to charge the regular established minimum commercial rate per inch if that rate is in excess of the rate of \$1.00 per inch for the first insertion and 50 cents per inch for subsequent insertions, in single column, nonpareil type, as set out in the beginning of the act.

The question as to whether or not the act of 1927 above mentioned applies to Section 756 of Revised General Statutes of Florida, has been presented to this office for determination, and I would be pleased to have your opinion as to whether or not the act in question could be made to apply to a tax sale advertisement.

My opinion is that House Bill No. 732, approved June 6th, 1927, which amends Section 2944 of the Revised General Statutes of Florida, relating to the amounts chargeable for publishing official notices or legal advertisements does not have any legal effect as an amendment to Section 756 of the Revised General Statutes of Florida which fixes the rate for the publication of notices of tax sales. When the Revised General Statutes of 1920 were adopted, the Legislature by adopting different sections, decided that the subject matter of what rate should prevail in the publication of ordinary legal notices and what rate should prevail in the publication of tax sale advertisements, should be kept separate. House Bill No. 732 undertakes to amend Section 2944 only leaving untouched any provision in Section 756. The courts of this State have repeatedly held that repeals of laws by implication are not favored (*Curry vs. Lehman*, 55 Fla. 847). To hold that House Bill No. 732 affects the provisions of Section 756 fixing the rate for publication of tax sale advertisements at 15 cents per inch per single column would be to hold that the amendment of Section 2944 by implication has repealed such provisions in Section 756 between which provisions there is no necessary nor ordinary conflict nor repugnancy.

Such a holding, as I have pointed out, is in direct conflict with the hold-

ings of our Supreme Court in a long line of cases holding that where two statutes do not necessarily conflict that both must be construed as being *pari materia* when relating to the same general subject matter by the different phases of the same. I am, therefore, of the opinion that the enactment of House Bill No. 732 amending Section 2944 has no legal effect upon the provisions of Section 756 of the Revised General Statutes fixing the charges for the publication of tax sale notices.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BUILDING AND LOAN ASSOCIATIONS—SECURITY FOR LOANS.

August 3, 1927.

Dear Sir:

I have your letter of August 2nd reading as follows:

The first portion of Section 20 of Chapter 10028, Acts of 1925, Laws of Florida (building and loan law), reads as follows:

"Section 20. Such association shall have power to loan or advance to the stockholders thereof, moneys of the association and to secure payment of such moneys and the performance of all other conditions upon which the loans are made by pledge of shares in said association, and by note, or bond and mortgage on real estate in the State of Florida, which shall be a first lien thereon, except taxes and special assessments, and except the prior liens held and owned by said association; to loan the funds of the association upon the pledge of the shares only of such association."

The above authority granted building and loan associations to make loans on certain securities among which you will note it says: " * * * mortgage on real estate in the State of Florida, which shall be a first lien thereon, except taxes and special assessments, and except the prior liens held and owned by said association." Will you kindly advise me if an association has a right to make loans where the security is a lease-hold instead of a mortgage on property held in fee simple?

I am of the opinion that Section 20 above referred to does not authorize the loan or advance of money secured merely by bond or mortgage on lease-hold estates as distinguished from the fee simple title. The phrase "bond and mortgage on real estate in the State of Florida which shall be a first lien thereon" has reference to a fee simple title of unencumbered real estate and does not cover a mere lease-hold estate, however valuable it is.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

RECEIVERS—POWERS.

August 5, 1927.

Dear Sir:

I have your letter of August 3rd, reading as follows:

I am transmitting herewith a petition addressed to this office in relation to a drug store located in Fort Lauderdale, Florida, which was known as the Fort Lauderdale Drug Company, and was indebted to the City Bank of Fort Lauderdale, and the receiver had

to take over the property for debts due the bank, which was accomplished, as in the manner provided by law, and the only question presented for which I desire your opinion is as to the right of the receiver to carry on a business for the purpose of disposing of the stock or otherwise, with the purpose of collecting enough money to liquidate the obligation of the Fort Lauderdale Drug Company to the City Bank of Fort Lauderdale, of which he is receiver.

Any expressions you desire to make that would be of benefit to receiver in the handling of this matter, will be greatly appreciated, as it is an entirely new proposition, so far as this office is concerned.

Replying thereto, I will state that the Supreme Court in the case of *McNeil vs. Pace*, 69 Fla. 349, has held that the statutory powers expressly conferred upon the Comptroller and receivers appointed by him carried with them by implication of law all consistent powers that are necessary to the effectual execution of the powers expressly conferred. Section 4165 of the Revised General Statutes authorizes receivers, upon approval of the Comptroller, to purchase any property which, by reason of any bond, mortgage, lien, assignment, equity or other proper legal claim attaching thereto, might be reclaimed or repossessed by any person having title opposed to such equity of his trust. Under the holding of the Supreme Court above referred to and Section 4165 of the Revised General Statutes I am of the opinion that a receiver appointed by the Comptroller may be lawfully authorized and directed by the Comptroller to buy in a drug store or other property subject to the claim of a defunct bank and to operate the same for a reasonable length of time as receiver for the purpose of collecting enough money to liquidate the obligation of the business thus taken in to the bank of which he is receiver. The Comptroller's powers are very broad in such matters, the purpose and intent of the statute being to realize the most money that can be realized from the assets of the defunct bank.

From the foregoing you will see that the matter of whether or not the Fort Lauderdale Drug Company shall be continued as a going concern for the purpose of liquidating its indebtedness to the defunct City Bank of Fort Lauderdale, is a matter which is entirely within the power and control of you as Comptroller in the premises.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

OCCUPATIONAL LICENSES—REAL ESTATE BROKERS

August 9, 1927.

Dear Sir:

I return herewith letter of Mr. Paul Meredith, executive secretary of the Florida Association of Real Estate Boards, Inc., together with memorandum opinion rendered concerning occupational licenses under Chapter 12223, Laws of 1927.

I have carefully examined the provisions of Chapter 12223, Laws of 1927, and particularly Section 14 thereof. At the outset, it will be noted that such Chapter 12223 contains no clause repealing any other law and whatever repeal is embraced in it would have to arise by operation of law, owing to a necessary and irreconcilable conflict between the provisions of the 1927 law and some earlier law.

Section 47 of the Act seems to contemplate that the new law is a continuation of the old with modifications.

I am, therefore, of the opinion that nothing in the Act of 1927 has had the legal effect of abolishing occupational taxes upon real estate brokers and salesmen as otherwise provided for by law as it appears to me to be clear that nothing contained in Section 14 of the new law was intended to impose an occupational tax upon real estate brokers and salesmen.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAXES ON PERSONALITY OF RAILROADS—ASSESSMENT AND
DISTRIBUTION

September 1, 1927.

Dear Sir:

I have your letter of August 11th, reading as follows:

In view of the decision of the Supreme Court just rendered in case of the Atlantic Coast Line Railroad Company vs. me as Comptroller of the State of Florida, involving collection of certain taxes amounting to \$83,837.47 apportioned to various special districts over the State, I respectfully ask your opinion as to how the railroad assessments should be apportioned to such district for the taxes of 1927 now being sent out.

Also I would like to have your opinion in view of another late Supreme Court decision involving assessments against national banks as to how building and loan associations should be assessed in this State, and also how companies competing with State and National banks in lending money on security should be assessed.

Replying to your first question stated therein, I am of the opinion that whatever defect may have existed in Section 747 of the Revised General Statutes that such defect has been met and obviated by Chapter 10284, Acts of 1925, which amends Section 747 so as to meet the objections which have been found by the Supreme Court in the case of the Atlantic Coast Line Railroad Company vs. Ernest Amos as Comptroller. I am, therefore, of the opinion that you should distribute and apportion taxes assessed on personal property of railroads to the various county special school districts, special road districts and other special districts that may exist so as to carry out the purpose and intent expressed by the 1925 amendment.

Replying to your second question as to how a building and loan association should be assessed in this State, I am of the opinion that these taxes should be assessed in accordance with Section 705 of the Revised General Statutes of Florida on the basis of paid up shares held in and reported for taxation by such companies.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TAXES, RAILROAD, DISBURSEMENT UPON SPECIAL ROAD
AND BRIDGE DISTRICTS

September 28, 1927.

Dear Sir:

Referring again to past communications in regard to the above matter, you are advised that the recent holding of the Supreme Court in the case of

McSween and Orr vs. Walton County (not yet reported) by which the Court held that there was no authority to make an entire county into a special road and bridge district, is limited in its application to special road and bridge districts created under the General Law and embracing an entire county. I am of the opinion that this holding of the Supreme Court will not affect the validity of taxes levied by a special road and bridge district consisting of an entire county, if such road and bridge district last mentioned was either created by the Legislature in the first instance, or its creation ratified by special act of the Legislature.

You should accordingly disburse the \$11,000 in your hands as the facts in each case disclose the nature of the particular special road and bridge district to be.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

HOUSE BILL NO. 1161, RELATING TO SUPERVISION OF BUSINESS OF
SAVING, SOLICITING OR RECEIVING SAVINGS—
CONSTRUCTION OF

September 28, 1927.

Dear Sir:

The above mentioned Act provides that the business of soliciting, accepting or receiving money, or its equivalent, as savings, the supervision of which is not placed elsewhere by law, shall be under the *supervision* of the same authority as is charged with the supervision of State banks, and all laws for the *supervision* of State banks, unless inconsistent, shall be applicable thereto.

Under this Act, I am of the opinion that you have ample authority to apply the appropriate provisions of the State banking laws of Florida to the businesses mentioned, in so far as *supervision* of such concerns is involved, but that you would not have authority, such as is conferred upon you in regard to banks, to restore impaired capital stock by making assessments thereon, nor would you have the power, where you find such companies or persons in such businesses to be insolvent, have the right to name a statutory receiver for such business under the same conditions as you might have power to do, under the banking laws. The title and body of the Act is limited to "supervision" only and that is as far as the same can lawfully have a field of operation.

In the case of insolvent concerns of this kind, the proper method of procedure would be to apply to a competent court for a judicial receivership for the concern and the winding up of its affairs.

This opinion is given in response to your letter of the 20th inst.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

REAL ESTATE BROKERS, LICENSE TAX TO BE COLLECTED

September 29, 1927.

Dear Sir:

The 1927 Legislature passed House Bill No. 469, which was entitled An Act to Regulate and Register Real Estate Brokers and Real Estate Salesmen, etc., which became a law without the approval of the Governor on August 2, 1927, sixty days after the Legislature adjourned, pursuant to the constitutional provisions in that regard. Among the matters contained in said Act

is a provision to the effect (see Section 14) that "no collector nor county judge shall issue any real estate occupational license except upon compliance with this Act by the procurement and production of the registration certificate therein provided for. This provision in Section 14 of House Bill 469, construed in connection with the fact that House Bill No. 469 contains no general repealing clause, clearly evidences the legislative intent to preserve and keep intact the previously existing occupation taxes provided to be collected from real estate salesmen and brokers.

This brings us to the question of what occupation tax shall be collected, which question is answered by reference to Section 3 of Chapter 11336, Acts of 1925, extraordinary session, which provides for a license occupational tax of \$10.00 for each real estate broker's license; \$5.00 for real estate salesmen, same to be paid to the tax collector. In other words, the provisions of Section 2 of Chapter 11336, Acts of 1925, above referred to, are still in full force and effect and have not been repealed by House Bill 469, Acts of 1927, and I am of the opinion that the provisions of Section 15 of said Chapter 11336, to the effect that "the occupational license tax collected from real estate brokers and salesmen shall be administered and accounted for as under the General Laws of this State" is also not repealed by said House Bill No. 469, Acts of 1927.

The annual registration fee provided for by Section 14 of the 1927 law cannot be construed as an occupation tax, but is rather, as the Act dominates it, an annual qualification or registration fee in addition to the designated occupational tax.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GASOLINE TAX

September 30, 1927.

Dear Sir:

I have your letter of September 28th, reading as follows:

It seems that the * * * Oil Company is making sales of gasoline which is supposed to be consummated in Louisville for delivery outside of the State, but in fulfillment of the contract gas is actually being shipped from Miami to points outside the State to supposed purchaser under the contract above mentioned. It is represented that no money consideration passes in the State.

Under such state of facts is there a tax due the State of Florida on such sales of gas?

The laws of this State seem to contemplate that the license tax imposed upon dealers of gasoline in this State is a license tax imposed upon the dealer for his privilege of doing business in Florida as such dealer, the amount thereof being based or computed upon the quantity of gasoline sold—calculated upon the basis of a tax of 5 cents per gallon for each gallon sold.

Sales of gasoline while they have an interstate character are not subject to this tax. However, the question of when such a sale is divested of its interstate character is dependent upon the facts and circumstances of particular cases.

This question is involved in a case now pending before the U. S. Supreme Court on an appeal from a decision by the Florida Supreme Court, upholding

the right of the Railroad Commission to require the application of local rates on gasoline going into Miami, Tampa, Jacksonville and other ports.

The burden of proof is on the oil company to show that it is exempt from the tax by reason of the shipment being one in interstate commerce. In the absence of such a showing the tax should be demanded and collected.

If the gasoline you mentioned is merely imported at Miami, to be thence transported to points outside of the State and disposed of it will not be subject to the Florida tax, but if orders are taken in other States to be filled by shipments of gasoline from gasoline held in storage in Florida for distribution purposes, there is nothing in the statute which says that the dealer is exempt from the payment of such a tax.

The tax is really a license tax against the dealer in his individual capacity and is not a tax upon the commerce itself. If such dealer fills orders in Florida out of supplies of gasoline kept in storage by him in Florida for the purpose of filling orders received by him the amount of gasoline sold pursuant to orders received from outside the State should be included in the computation of the number of gallons for which the dealer is liable by way of a license tax.

In the absence of further information as to the particular contract made and the manner of handling the shipments, I am unable to give you a more definite opinion on the subject inquired about in your letter.

I would suggest that the tax be demanded in the absence of a clear and convincing showing that the subject matter is of such a nature as to exempt the dealer. The bare facts stated in your letter are not sufficient of themselves to constitute such an exemption.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

FEDERAL BANKS—TAXATION.

October 15, 1927.

Dear Sir:

Replying to your letter of October 14th, with reference to pending suits brought in the Circuit Court of Jackson county to restrain the collection of State taxes against the First National Bank of Marianna, the First National Bank of Graceville, the Bank of Malone and the Bank of Greenwood, I am of the opinion that there is no statute which would authorize contribution by the State to pay attorneys employed by the county to defend these suits. Insofar as defending these suits is concerned in regard to the State taxes that is a matter which devolves upon the office of the Attorney General and the State's Attorney of the 14th Judicial Circuit and there is no other provision made to represent the State's interests in such matters other than through its duly authorized State's Attorney and Attorney General.

With regard to the liability of national banks to taxation under the existing laws of this State, I am of the opinion that there is nothing contained in the recent decision of the Supreme Court which holds that national banks as such are exempt from State taxation unless there is an unlawful discrimination against such banks in the manner of the assessment of such tax. The Supreme Court failed to declare the State law unconstitutional and on the contrary held that the State law was valid and only sustained the right of the Bank of Pensacola to maintain the suit on the ground that the

assessment of a tax against national banks under the statute without likewise assessing other money-lending institutions in the same business constituted an unlawful discrimination which was prohibited by the Federal statutes governing taxation of national banks. The Pensacola case is being followed up vigorously by the Attorney General's office with a view of obtaining a direct decision on the merits of that case, the previous decision having been upon a demurrer to the bill of complaint only.

So far as the State banks are concerned, there is absolutely no ground whatever upon which they can hope to succeed to avoid payment of the tax in my opinion, although it would seem unjust that the State banks would have to pay the tax without Federal banks having to pay it also.

Inasmuch as State taxes are involved in the suits referred to in Mr. Mayfield's letter, the Comptroller should apply for leave to intervene in such suits under the statutes and become a party thereto in order that proper defense of same may be made through the appropriate officers.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

COUNTY DEPOSITORY SECURITIES—CONSTRUCTION SECTION 1560
R. G. S. WITH REFERENCE TO.

October 20, 1927.

Dear Sir:

Section 1560 of the Revised General Statutes among other things provides that the bank acting as county or school fund depository under the statute, shall make satisfactory deposit "to the credit of" the county, such Federal, State, county or municipal bonds, in an amount to be determined by the Comptroller, and approved both as to amount and validity by the Comptroller.

The phrase to "the credit of" used in the statute indicates that the bonds in question will be deposited with some custodian to hold for the county, and not that the bonds will be delivered to and held by the county itself.

The Comptroller must approve the deposit "to the credit of" the county, both as to the amount of the bonds, the validity of same and the regularity of the deposit of same "to the credit of" the county as provided in the statute.

I am, therefore, of the opinion that the Comptroller may accordingly insist that the bonds be deposited with his office "to the credit of" the county, as a condition precedent to giving his approval of the deposit, etc. By thus having custody of the bonds and being in position to examine them at all times the Comptroller is enabled to keep advised as to the observance of the statute, and when occasion demands, to require other or additional securities to be posted.

Trusting this fully answers your inquiry of October 17th, 1927, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TRUST FUND—SECURITY.

October 27, 1927.

Dear Sir:

I have your letter of October 25th, in which you advise me that the

Citizens Bank & Trust Company of Tampa operates under a legislative charter and in which you request my opinion as to whether or not Senate Bill No. 286, Acts of 1927, Laws of Florida, entitled as follows:

AN ACT making it unlawful for any officer, director or employe of a trust company to make deposits of any of the funds belonging to any particular trust without taking full and adequate security therefor, and prescribing penalty for violation thereof.

which became a law June 6, 1927, is binding upon such a corporation as the Citizens Bank & Trust Company of Tampa, which operates under a legislative charter as distinguished from a charter granted under the general law.

The act in question was intended to regulate the conduct of trust companies doing business in the State of Florida in regard to the investment of their trust funds. The act prohibits investment of their trust funds in the banking department of any trust company itself without taking full and adequate security therefor. A violation of the law is made a misdemeanor punishable by a heavy penalty. Such requirements as this are clearly within the power of the State to make and it is immaterial whether the trust company has a special charter from the Legislature or not.

I am, therefore, of the opinion that the Citizens Bank & Trust Company of Tampa is bound by the provisions of Senate Bill No. 286 above referred to unless the same should be found to be wholly unconstitutional in proper proceedings brought for that purpose; in which event it would not bind any trust company.

I am unable to see any constitutional defects in said bill. On the contrary, it appears to be a very salutary law designed for the protection of persons dealing with trust companies in this State.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BUILDING AND LOAN ASSOCIATIONS—INTERPRETATION OF SECTION 18 OF CHAPTER 10027, ACTS OF 1927.

October 28, 1927.

Dear Sir:

Section 18 of Chapter 10028, Acts of 1927, Laws of Florida, provides among other things "That one-half of the funds received by the association in any one month shall be applicable to the payment of withdrawing stockholders if required, but no greater proportion need be used unless otherwise ordered by the board of directors, etc."

This part of the statute has reference only to those revenues of the building and loan association which come to it in due course of its business, and which are derived from the carrying on of its ordinary business, and has no reference to extraordinary revenue such as might be derived from the rentals received from a property owned by the association, which rentals are received by the association merely by reason of its being owner and landlord of the property rented.

The withdrawal privilege of stockholders under Section 18 is to accomplish the purpose stated in the act that such withdrawing stockholder shall "be entitled to receive the full amount of dues paid in upon the stock so to be withdrawn, together with all declared unpaid dividends, less all

finances and other charges, including a pro rata share of the losses, if any" and the provision following which is substantially that quoted above has reference to the sources of revenue from which said dues paid in, declared unpaid dividends, etc., are to be derived, namely, from the ordinary building and loan association activities of the association in the transaction of its usual business with the income usually derived from such transaction of its business.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TRUST COMPANIES—DEPOSIT OF SECURITIES

November 23, 1927.

Dear Sir:

Sections 4187 and 4188, Revised General Statutes of Florida, are general laws of the State governing the powers, duties and functions of trust companies without regard to whether such trust companies are incorporated under the provisions of Section 4183, 4184 and 4185 or not.

Section 4187 provides in part as follows:

No trust company of this State authorized to act as assignee, receiver, administrator, guardian or trustee, shall be required by any officer or court of this State to give security upon appointment. * * *

Section 4188 provides:

That said company shall deposit with the State Treasurer a sum equal to twenty-five percentum of its paid in capital stock: Provided, * * *

By the ordinary rules of statutory interpretation, it is apparent that the words "said company" appearing in Section 4188 have reference to the words "trust company of this State" appearing in Section 4187.

The words "trust company of this State" appearing in Section 4187 are not limited to those trust companies incorporated subsequent to the passage of Chapter 6155, Acts of 1911, but appear to apply to all trust companies which undertake to do the things mentioned in Section 4187.

I am, therefore, of the opinion that the Peninsula Trust Company of Tampa, which operates under a charter granted January 14, 1907, as well as any other corporation which operates under a special charter granted by the Legislature of the State of Florida prior to 1911 are within the purview and intent of Section 4187 and 4188 of the Revised General Statutes of Florida and that such companies can be required and ought to be required to comply with Sections 4188 of the Revised General Statutes of Florida by making the deposit of securities therein mentioned.

On the other hand, should it be successfully contended that the requirements of Section 4188 do not apply to corporations such as the Peninsula Trust Company of Tampa, which were incorporated prior to 1911, then it would follow that the beneficial provisions of Section 4187, allowing such trust company to act as assignee, receiver, administrator, guardian or trustee without giving bond or being required to give bond, would not apply to such trust company, either.

The theory of this provision is to allow a trust company to make a general deposit of securities with the State Treasurer, which would operate for the protection of all of its patrons and clients without forcing such company to

the necessity of giving security in each particular case and in each particular matter handled by it, the general deposit taking the place of the particular, separate bonds and securities which were formerly required in each individual matter.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

**BANKS—METHOD OF COMPUTING LEGAL RESERVE REQUIRED
UNDER SECTIONS 4140 AND 4141, R. G. S.**

November 26, 1927.

Dear Sir:

Section 4140, Revised General Statutes of Florida, requires that banks doing business in this State shall keep on hand in lawful money an amount equal to at least twenty percent of the aggregate amount of its deposits. Section 4141 provides that "three-fifth of the reserve of twenty percent required by the preceding section to be kept may consist of * * * bonds of the United States, State of Florida, counties and cities of the State of Florida, said bonds to be approved by the Comptroller."

Frequently special deposits are made with banks for securing which the banks pledge certain of their bonds, state, county or municipal. Particularly is this true in the case of banks which receive deposits of public funds for which they are required to give such or similar securities.

Undoubtedly the amount of *aggregate* deposits in a bank, as mentioned in Section 4140, for which a reserve of twenty percent is required to be kept, embraces these special deposits, which are secured by bonds of the bank pledged to insure their payment. These bonds, though pledged for such purpose of security, nevertheless, are still the property of the bank and usually represent part of the deposits of the bank, invested in such form. A bank would have the undoubted legal right to invest every dollar of its deposits in state, county and municipal bonds, retaining in money the required two-fifths of twenty percent of its aggregate deposits, and in such event the amounts so invested in bonds would comply with Sections 4140 and 4141 as to required legal reserve.

I am therefore of the opinion that where the amount of a deposit secured by pledge of bonds, is included in the calculation of the *aggregate* deposits mentioned in Section 4140, that the amount of bonds so pledged may be considered as part of the legal reserve under Section 4141, to the extent that they do not exceed three-fifths of twenty per cent of the aggregate deposits of the bank.

Trusting this answers your inquiry of November 26, 1927, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

**TAXES, SPECIAL TAX SCHOOL DISTRICT ASSESSMENT AND
COLLECTION.**

January 24, 1928.

Dear Sir:

I am in receipt of your letter of January 18th, in which you ask my opinion as to the proper mode of assessing and collecting Special Tax School District taxes which have been levied pursuant to vote of the people and as required by the Constitution.

Section 571 of the Revised General Statutes of Florida provides that it shall be the duty of the trustees of special tax school districts on or before the first day of June in each year to prepare an itemized estimate showing the amount of money necessary and likely to be raised for the district for the next ensuing scholastic year, and to certify therein the rate of millage voted to be assessed and collected upon the taxable property within the special school district for that year. This statement should also show the number of miles of railroad track and telegraph lines within the boundaries of the district and should be in triplicate—one copy to be filed with the clerk of the Board of County Commissioners, one copy with the Comptroller and one copy with the County Board of Public Instruction except where there are no railroads or telegraph lines in the district, in which case no itemized estimate need be furnished to the Comptroller.

Section 572 of the Revised General Statutes makes it the duty of the County Commissioners thereupon to order the assessor to assess and the collector to collect the amount legally assessed upon the property of the special tax school district at the rate of millage designated by the board of trustees and to pay the same to the county treasurer. It is also made the duty of the Comptroller to assess all railroads and railroad property, together with telegraph lines and telegraph property situated in such special tax school district and to collect the taxes thereon in much the same manner as required by law to assess and collect said taxes for State and County purposes and to remit the same to the treasurers of the counties to be by them held to the credit of each special tax school district fund and to be paid out as provided by law.

Section 573 makes it the duty of the county tax assessor to furnish the total of the amount of special tax school districts assessed to the Board of Public Instruction.

In regard to the amount of taxes which is levied in special tax school districts to support special tax school district bonds, the provisions of Section 593, Revised General Statutes, require that it shall be the duty of the County Commissioners of a county to levy annually a tax upon all real and personal property, railroad and telegraph and telephone lines, owned or situated within the said special tax school district not to exceed 5 mills on the dollar sufficient to raise and pay the interest on the special tax school district bonds and sufficient to create the sinking fund for the payment of the principal of the bonds. Substantially the same proceedings for the assessment and equalization and collection of the tax exists as for other county taxes.

I note your statement that the Seaboard Air Line Railway Company has refused to pay the taxes assessed on their lines in Madison county for the benefit of Special School Districts Nos. 1 and 7.

In my opinion the requirements of the above cited statutes relating to the assessment and collection of special tax school districts must be substantially followed in order to make the tax levied enforceable and any tax which is not properly levied by the Board of County Commissioners as required by the statutes above referred to could be legally enforced against the railroad company.

I might call your attention to the fact that within the past two years

much litigation has been had with the railroad companies of this State relating to special tax school district taxes and we want to avoid doubtful questions. Local authorities should be very particular to see that the law is strictly complied with in the assessment of these taxes as the State officials are unable to make collection of these taxes if they are not assessed properly by local authorities.

Of course, if the taxes against the Seaboard Air Line Railway in the district in question have not been legally assessed for the year referred to as yet, which matter I have not sufficient information on which to base an opinion, the same might be reassessed for the coming year.

I return herewith correspondence of Hon. T. C. Simms, County Superintendent of Public Instruction, Madison, Fla., dated January 12th and also letter from W. L. Stanley, vice-president, Seaboard Air Line Railway Company, which relate to the above matter and which were submitted with your letter of the 18th.

Very truly yours,

FRED H. DAVIS, Attorney General.

GASOLINE TAX.

February 7, 1928.

Dear Sir:

I have your letter of January 14th, transmitting to me letter from Mr. G. R. Wilby, assistant district sales manager, Gulf Refining Company, Atlanta, Ga., with reference to car of gasoline purchased by Dr. Folmar from the Sherill Oil Company of Pensacola at a price of 9½ cents per gallon delivered, which, of course, did not include the State tax of 5 cents per gallon.

You request my opinion as to whether or not gasoline sold and shipped from one point within the State to another point within the State is liable for the 5-cent gasoline tax.

Your question is answered by the act of the Legislature which defines a dealer in gasoline as being any person, firm, corporation or association engaged in the business of selling in the State of Florida such of the petroleum products covered by the law as have been divested of their interstate character, it being the intention of the law as stated in the title that the license tax imposed upon the sale of the petroleum products mentioned shall be collected only once and upon the *first* sale of such product after the sale has lost its interstate character.

Under the circumstances the sale of gasoline made in the State of Florida to be consummated by the delivery of gasoline by shipping the same from one point in this State to another point within the State will be subject to the 5 cents per gallon gasoline tax unless such tax has already been collected on such gasoline in a previous transaction.

I return herewith correspondence submitted with your request.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—DEALERS IN GASOLINE.

February 10, 1928.

Dear Sir:

Answering your recent inquiry, asking my interpretation of certain por-

tions of Chapter 12037, Acts of 1927, relating to the imposition and collection of license taxes on the sales of gasoline by dealers in this State, I beg to advise that Section 1 of Chapter 9120, Laws of Florida, as amended by Section 1 of Chapter 10025, Acts of 1925, as amended by Section 1 of Chapter 12037, Acts of 1927, provides that:

* * * every dealer in gasoline or *any other like products of petroleum under whatever name designated* * * * shall be subject to and shall pay the tax therein provided for.

The title of the act refers to *gasoline or other like products of petroleum* and I am of the opinion that any product which not being gasoline is nevertheless a like product of petroleum and in fact a substitute for gasoline and used for the same general purposes as gasoline is as much subject to the payment of the tax provided for by Chapter 12037 as is gasoline itself. The purpose of the law was manifestly to make gasoline and like products of petroleum which were usable for the same purposes but which went under different names subject to the same tax as is gasoline.

The question of what is a like product of petroleum is, of course, a question of fact to be determined in each case by you preliminary to insisting upon the payment of the tax and in my mind a very high degree of evidence towards settling this question would be the evidence which might be furnished you by the State Chemist by means of analysis of the particular product in question.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TAXES—ADJUSTMENT.

February 10, 1928.

Dear Sir:

My attention has been called by notices served upon me and by other communications to the effect that there are a large number of controversies either pending in the courts of the State or threatened to be brought into the courts of the State, seeking relief from alleged unjust, inequitable and unequal taxation because of the rule of tax assessors in putting arbitrary values upon subdivided lots of land, thereby greatly enhancing the taxable value thereof beyond that which such property formerly carried as acreage.

In several of these cases decisions have been made by the courts against State authorities, ordering a reduction of the amount of taxes so that the collection of same may comply with the Constitution, said suits having been instituted under Chapter 8586, Laws of Florida, Acts of 1921.

While there is no specific statutory way laid down for the accomplishment of the adjustment of inequities as have arisen in cases similar to those referred to above, it is undoubtedly true that relief in each instance where a proper case is made to appear can be obtained in the courts. Our scheme of taxation contemplates that the State's portion of ad valorem taxes shall be collected upon valuations fixed by local county authorities and I would, therefore, suggest as a means of promoting tax collections and as a means of avoiding a lot of unnecessary litigation, that wherever it appears that a grossly excessive tax valuation has been occasioned by putting arbitrary taxes on lots subdivided from lands which have formerly carried a lower

value as acreage, that you might adjust the matter as an error or insolvency in closing up accounts with your several tax collectors in the State.

In other words, the amount of the excessive valuation may be treated as an error of the tax assessor in making an excessive valuation and the case settled by allowing the taxpayer to pay up his taxes upon the basis of such valuation as may be approved by the Board of County Commissioners of the county, the difference to be taken care of by having County Commissioners approve such difference on the basis of an error in the assessment.

I might add that in a case brought in the Circuit Court of Leon County, Fla., several years ago relief was given against an excessive tax assessment by decree of the court and that the County Commissioners by virtue of such decree were necessarily forced to charge off the difference between what the court allowed to be collected and what was assessed as an error or insolvency in order to make their books balance.

I make this suggestion after conversation with your chief clerk, Mr. W. M. McIntosh, and as a means of solving a very grave problem which now confronts the State of Florida as well as the several counties in the collection of tax assessments upon subdivisions which have resulted in a gross and apparently unjustified increase in the taxable values of the lands over that which they carried when they were subdivided.

My opinion is that this can be legally accomplished in the manner indicated on the basis of the settlement of what would otherwise be settled in court and also because the Constitution never contemplated that any citizen should bear more than his just share of taxation through an error or mistake in valuation which the tax collector would like to collect but finds himself at this time without power to do so.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE ATTORNEYS OR ASSISTANTS IN OTHER CIRCUITS— EXPENSES

February 20, 1928.

Dear Sir:

I have your request for my opinion concerning the propriety of paying a bill submitted to you by Hon. R. H. Hunt, Assistant State Attorney, 11th Judicial Circuit for expenses—\$86.98, incurred by him in appearing before the Supreme Court of Florida to argue a case in which a decree was rendered in favor of the State of Florida, involving the validity of \$3,000,000 bond issue in Dade county.

The statutes of the State of Florida provide that whenever it is sought to validate bonds that a suit shall be brought by the authority whose bonds are sought to be validated against the State of Florida as a party defendant and it is made the duty of the State Attorney to appear and interpose on behalf of the State any objections which may exist in law as to why the bond issue in question should not be validated.

Pursuant to this requirement of the statutes, Sections 3296-3302, Revised General Statutes of Florida, the State Attorney of the 11th Judicial Circuit of Florida, finding that the proposed bond issue in a case brought by the County Commissioners of Dade county against the State, was invalid as being a violation of the Constitution of the State, appeared and filed

his answer in court, raising such objections and accordingly a decree was entered by the Circuit Court of Dade county in which the validation of the bonds was refused by the Court. An appeal to the Supreme Court was taken by Dade county, naming the State of Florida and Assistant State's Attorney as appellees.

Owing to the fact that no service of papers in this case is required to be made upon the Attorney General but that service is made upon the State's Attorney only and in view of the fact that the decree sought to be appealed from was rendered in favor of the State of Florida and the time allowed for its consideration was so short that it was impossible for the Attorney General's office to obtain copies of pleadings in time to make reply, the State's Attorney of the 11th Judicial Circuit was requested by me to participate in the presentation of this case to the Supreme Court and accordingly appeared at Tallahassee on the date indicated in the enclosed bill.

The laws of Florida require State's Attorneys to interpose these objections, if any exist, and also provide for an appeal in such cases to the Supreme Court. The decree having been made in favor of the State and the State having been brought into the Supreme Court because the State's objections had been sustained it became necessary for the State's Attorney of the 11th circuit or his assistant to follow the matter into the Supreme Court.

The statutes of Florida, Chapter 11808, Acts of 1927, make provision for the payment of traveling expenses for State Attorneys in other circuits, per annum, \$600.00. The obvious purpose of this provision is to have the State Attorney, who is required to leave his own circuit and to go to another place in the State to attend to his official duties, reimbursed for such extraordinary traveling expenses.

I am, therefore, of the opinion that the submitted bill of Mr. R. H. Hunt, Assistant State Attorney, for traveling expenses amounting to \$86.98, if approved by the Governor, is a proper item to be paid out of the appropriation for State Attorneys in other circuits, as I deem the language "in other circuits" is used for the purpose of covering any situation in which the State Attorney is forced to perform his duty outside of his own circuit and is not necessarily limiting him to performing his duty in the Circuit Court but may embrace the performance of duties in the Supreme Court in proper cases such as this.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

NATIONAL GUARD—FLORIDA—DISBURSEMENTS.

February 22, 1928.

Dear Sir:

Section 4 of Chapter 12089, Laws of Florida, approved May 9th, 1927, provides, in part, as follows:

There shall be annually paid to the commanding officer of each brigade or higher unit of command * * * the following sums for the maintenance of such organizations and for the care of the public military property entrusted to their charge * * *

On September 24th, 1927, this office rendered an opinion to the Gov-

error, holding that under the case of *State vs. Allen*, 91 So. text 105 the foregoing language in Section 4 of Chapter 12089, Acts of 1927, constituted an annual and continuing appropriation of the sums of money therein specified to be paid.

Your letter of February 18th refers to the following items on page 20 of the Acts of 1927 in the General Appropriation Bill, which was approved June 9th, 1927.

For quarterly allowance and band.....	\$8,850.00 per annum
Uniform allowance.....	4,250.00 per annum

These appropriations are made separate for each of the two years covered by the appropriation bill.

In reply to your request for my opinion as to the construction to be placed upon the appropriation bill, as construed in connection with Chapter 12089, I am of the opinion that your construction of the same—to the effect that the appropriation for each of these purposes is to be exhausted before the provisions of Chapter 12089 are to be resorted to—is the correct one as the items in the appropriation bill appear to be based upon the general provisions of the military code authorizing the payment of such sums of money, although the amounts allowed are insufficient to cover the purpose. In other words, one is a duplicate of the other.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

FEES—PAYMENT TO DOCTOR AND CHEMIST RE CRIMINAL CASE.

February 22, 1928.

Dear Sir:

I note the request of Hon. N. S. Wainwright, clerk of the Circuit Court of Glades county, for information as to whether or not there is any provision of law for the payment of a chemist and doctor in a criminal case certain sums of money, amounting to \$450.

There does not appear to be any specific general law on this subject.

If the County Commissioners of the county make the proper provision therefore in the county budget there is nothing to prevent a Board of County Commissioners in a proper case where they deem it advisable for the administration of justice to employ by contract a physician or chemist to make an examination to determine whether or not a crime has been committed.

Such has been the practice in those counties where no special law has been passed on the subject.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTORS—REGISTRATION OF BEFORE TAX COLLECTORS

February 29, 1928.

Dear Sir:

I have your letter of February 28th, transmitting to me letter received by you from Hon. Randall Wells, tax collector of Putnam county, dated February 27th, asking for my opinion as to the proper interpretation of Section 313, Revised General Statutes, permitting persons to register before tax collectors.

This section has been construed by previous Attorneys General and I

concur in their construction to the effect that no person is entitled to register before the tax collector except under the terms and conditions stated in the law itself, and this: "when paying their poll taxes."

The intent of this provision, which is applicable only to primary elections and not to the general elections, is to encourage the registration of persons who are required to pay their poll taxes anyway. For example, the law requires the tax collector to collect poll taxes from a tax payer who pays on real or personal property and he must pay such poll taxes, whether he intends to vote or not. In order to make it convenient for such persons who are thus called on to pay poll tax to secure the benefits of their right of suffrage, which they are paying for any way, the law provided for the tax collector to have power to register such persons.

Another reason for the law was that persons frequently complain that they should not be required to pay poll taxes because they were not registered to vote. The answer to the argument was for the tax collector to produce a registration blank and qualify the person then and there by registering him.

I do not think that the tax collector has power to register anyone except at the time the registrant pays his or her poll tax. If a registrant has paid poll taxes to the tax collector at a previous time the tax collector has no power to register him at a subsequent date.

Trusting this gives you the information that you require, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TIRE AND TUBE DEALER—WHAT CONSTITUTES

March 20, 1928.

Dear Sir:

I have your request of March 16, 1928, for my opinion as to what constitutes an automobile tire and tube dealer under the provision of Chapter 12412, Acts of 1927, Laws of Florida.

Under Section 6 of the Act the definition of a tire and tube dealer is given as follows:

Every person, firm or corporation who buys automobile tires and tubes or either for resale, or who is engaged in selling automobile tires and tubes or either, whether as a separate and independent business or in connection with any other business, be and is hereby declared to be an automobile tire and tube dealer.

It will be noted that the first class of persons covered by the definition is that class which buys tires and tubes for resale.

The second class of persons comprises those engaged in selling automobile tires and tubes, whether as a separate and independent business or in connection with any other business. The question then arises as to whether or not a person who receives and sells tires and tubes on consignment is engaged in selling the same within the meaning of the second part of the definition. I think such a person would be, and I think it could scarcely be contended that one could conduct a hardware business in Tallahassee or any city by selling goods for Sears-Roebuck & Company which were sent to him entirely on consignment can escape paying a hardware dealer's license tax merely because the goods were sent to him on consignment and he receives his commission only for disposing of the goods.

The mere taking of orders by sample would not constitute the person

taking the orders a tire and tube dealer within the meaning of the section providing the person, firm or corporation for which he took the orders was itself properly licensed as a tire and tube dealer, as he would be merely acting as the agent of the vendor, a properly licensed concern, authorized to sell tires and tubes either directly or through agents.

Salesmen working for a duly licensed tire and tube dealer carrying samples, taking orders and collecting money due pursuant to orders would not be subject to a separate license as such salesman. The license of the principal for which such salesman worked would be sufficient to cover his taking orders, etc.

In this connection I would call attention to the fact that both a State and County license is provided for by Chapter 12412. Therefore, a salesman would only be protected by the license of the principal for which he worked in the particular counties for which his principal had taken out a county license. In other words, a tire and tube dealer having a proper license in Orange county might sell tires and tubes either at this place of business or by sending out salesmen or by constituting filling stations, etc., as agents to take orders, provided it confined its business to Orange county unless it wished to take out a further county license for any other county in which it desired to extend its operations.

Trusting I have made the matter clear, I am

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICT NO. 7—LEE AND COLLIER COUNTIES—SINKING FUND AND INTEREST

Dear Sir:

April 18, 1928.

I have your request of April 12th, asking my opinion with reference to the collection and handling of both the interest and sinking fund money collected in Lee and Collier counties respectively in connection with a bond issue made by Special Tax School District No. 7, created when the district was located in Lee county but part of which, since the creation of Collier county lies in the latter county; the interest and sinking fund of which bond issue has to be collected in part by each of the two counties.

Unless this matter can be adjusted by agreement between the two counties in question and proper resolutions passed by Lee and Collier counties, governing the distribution of the liability for the indebtedness and making provision for the interest and sinking fund in each of the counties, the matter will have to be settled by suit in chancery, to be instituted in the name of one county board against the other county board, for the purpose of having the court adjudicate the respective liability of each county and of making provision in its decree for proper protection for the interest and sinking fund.

It is the duty of each county to take proper steps to protect the interest and sinking fund of this bond issue and if they cannot agree upon the amount for which each county is liable respectively they should at once have the matter determined by the Circuit Court.

Neither county has the right to refuse to provide for the collection of its fair proportion of interest and sinking fund.

Very truly yours,

FRED H. DAVIS, Attorney General.

MONEY—TRANSFER OF FROM ONE FUND TO ANOTHER.

April 18, 1928.

Dear Sir:

I have your letter of the 13th inst., as follows:

I am transmitting herewith a letter received from the secretary of the Board of Commissioners of State Institutions in reference to a transfer of \$5,000.00 from the free school text book fund to the incidental fund of the Board of Commissioners of State Institutions, and I would be very much pleased to have you advise me whether or not the transfer requested can be made under the act of the Legislature of 1927, Chapter 12295 of the Laws of Florida, and if so, should it not require the action of the Governor.

Transfers of money from one fund to another as provided for by Chapter 12295, Acts of 1927, Laws of Florida, can only be accomplished by action of the Governor with the approval of the Comptroller, as provided by Section 2 of the act.

If the procedure provided for by Section 2 is followed, I am of the opinion that the sum of \$5,000 may be legally transferred from the free school text book fund to the incidental fund of the Board of Commissioners of State Institutions.

In each separate item of appropriation the word "fund" as used in Section 2 of the act has reference to any sum of money set aside for the specific purpose, whether by way of appropriation or otherwise.

Very truly yours,

FRED H. DAVIS, Attorney General.

TRUST FUNCTIONS, EXERCISE OF BY BANKS

May 4, 1928.

Dear Sir:

I have your letter of April 11th, in which you request my opinion as to whether or not you should stop a certain bank from exercising trust functions until it has complied with Chapter 6155, Acts of 1911, as amended, in view of the fact that the particular bank in question was chartered in 1907 and its charter appears to carry with it the privilege of acting as trustee, executor, administrator, etc., it further appearing that the bank has not undertaken to exercise this privilege contained in its charter until the past few months.

In my opinion the fact that this bank was chartered in 1907 and authorized to exercise trust functions does not empower such bank to ignore or violate the requirements of the law relating to the conditions upon which trust companies can do business in this State and I advise, therefore, that you should proceed against this bank as if the charter power referred to did not exist.

I find no provision of law exempting banks doing business in Florida, whether incorporated before or after the passage of the legislative act of 1911 from complying with the provisions of Section 4188, Revised General Statutes of Florida.

Very truly yours,

FRED H. DAVIS, Attorney General.

LANDS SOLD OR CERTIFIED TO STATE—PROCEDURE.

May 15, 1928.

Dear Sir:

I have your request of May 14th for my opinion as to whether or not a tax collector can advertise land previously sold to the State, the certificate covering which land is still held by the State.

Section 722, Revised General Statutes of Florida, contains the following provision:

Provided, that the county assessor of taxes shall not assess any lot or parcel of land certified or sold to the State for any previous years, unless such lot or parcel of land so certified or sold shall be included in the lists furnished by the Comptroller to the county assessor of taxes as provided by law; and the Comptroller shall not allow any commissions to the county assessor of taxes, tax collector, or costs to newspapers advertising the same, the assessor being liable and responsible for costs of advertising property wrongfully assessed and advertised in accordance with the provisions of this section.

The purpose of the law above referred to was to make it unnecessary for a tax collector to advertise and sell land which had been sold for taxes and certified to the State unless same should be expressly directed by the Comptroller because of irregularity or invalidity of the certificate held by the State or some other cause.

In other words, the procedure contemplates that a tax collector shall advertise and sell property for taxes and in the event that same is certified or sold to the State that the same shall not again be advertised for sale by the tax collector so long as the certificate of same is held by the State, whether subject to redemption or otherwise. Should the landowner desire to redeem his property he could do so within two years by paying up the outstanding certificate held by the State as well as all subsequent taxes accruing thereon. In the event that a taxpayer did not redeem the same within two years after the tax certificate was certified to the State title to the land would automatically vest in the State at the expiration of the two years. See Section 769, Revised General Statutes.

Section 769, Revised General Statutes, requires that Tax Assessors, in making up their assessment rolls, shall place thereon the land certified to them by the Comptroller as having been sold to the State for taxes and shall enter their valuations of the same on the rolls and shall mark against such lands the words "State Tax Certificate," but that the amount of taxes on said lands shall not be extended on the roll. When said lands are redeemed from the tax certificate or certificates the person redeeming shall also pay the taxes for the years for which the said lands are marked as aforesaid at the rate of taxation levied thereon in those years, respectively, together with interest as provided by law.

I am, therefore, of the opinion that when lands have once been advertised and sold and certified to the State they should not be again advertised or sold by tax collectors as long as such certificates remain in the hands of the State, unredeemed or unsold.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

To the Honorable Tax Collectors and Tax Assessors of the State of Florida—Gentlemen: The foregoing opinion of the Attorney General is communicated for your information and guidance.—Ernest Amos, Comptroller.

WITNESS—NON-RESIDENT BEFORE GRAND JURY—MILEAGE AND
PER DIEM

May 15, 1928.

Dear Sir:

I have your letter of May 14th, reading as follows:

I am transmitting herewith a letter from Hon. K. B. O'Quinn, clerk Circuit Court of Pinellas county, to which is attached an order of the court signed by Hon. John U. Bird, judge of the Sixth Judicial Circuit, directing the clerk to pay out of the money furnished to him by the State to pay jurors and witnesses before the grand jury the actual expenses from the City of New York to the City of Clearwater in the amount of \$108.00, to one L. C. Smith, as a material witness of the State before the grand jury of Pinellas county.

The law provides for furnishing the money to pay jurors and witnesses before the grand jury and fixes the mileage and per diem to be allowed in such cases and further provides that the money shall not be used for any other purpose.

Kindly advise, if in your opinion the disbursement of the \$108.00 by the clerk can be allowed in auditing his pay-roll.

It appears from the papers that you submitted that one L. C. Smith, who was at the time in the City of New York was a material witness for the State before the grand jury of Pinellas County, Fla., in order to enable the State to secure an indictment against one N. E. Jones for obtaining money under false pretenses.

The statutes of the State provide that the compensation of witnesses before the grand jury shall be paid by the State of Florida and is not a charge against the several counties.

It has been suggested that inasmuch as a grand jury subpoena for the witness from a Florida court would not run outside of the State of Florida that it would be improper to pay a witness any per diem or mileage except for his per diem and mileage earned or which accrued to him in the State of Florida.

While it is true that a grand jury subpoena has no territorial jurisdiction beyond the borders of this State, yet the Constitution of the State of Florida has provided that Circuit Courts and the judges thereof shall have power to issue "All writs proper and necessary to the complete exercise of their jurisdiction." See Section 11, Article V, Constitution.

It appears that in the instant case the witness was willing to voluntarily come into the State of Florida to give his testimony before the grand jury provided that he would be assured of the payment of his actual, reasonable and necessary expenses from the City of New York to the City of Clearwater in the amount of \$108 and it further appears that Hon. John U. Bird, judge of the Circuit Court for Pinellas County, Fla., acting upon petition of the State Attorney of that circuit has made an order, by which he finds that the testimony of the said witness was material, necessary and in-

dispensable and that the witness should be paid by the clerk the amount of such actual expenses incurred by him in attending the term of court and giving evidence before the grand jury.

In my opinion, the order of the judge in question is in the nature of a writ for the enforcement of the jurisdiction which is exercisable by the Circuit Court of Pinellas county under Section 11 of Article V of the Constitution of the State of Florida and that the payment by the clerk of the Circuit Court of the amount of money ordered to be paid by the judge in compliance with said order is legal and proper.

I might add that I am of the opinion that in a case where it is necessary that a witness be obtained from outside the State in order to enable the State to conduct the prosecution of a person charged with crime in this State before a court of general jurisdiction, that such court of general jurisdiction has the inherent right and power to provide for the payment of such witness by providing for his compensation in such reasonable amount as may be necessary in order to induce the witness to waive his immunity from ordinary process which he would have because of his absence from the territorial jurisdiction of the court.

In every such case as that above referred to I am of the opinion that the right of the clerk to make payment out of either State or County funds for compensation of a witness who attends from outside the State must be founded on an order made by the judge before whom the case is brought to trial.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BANKS, DEFUNCT,—PREFERRED CLAIM AGAINST

June 19, 1928.

Dear Sir:

I have your letter of June 1st, in which you ask my opinion upon the following proposition:

"A" received checks from his customers and deposited them in his ("A's") bank and they were forwarded through banking channels for handling in due course to the bank against which drawn. The bank on which drawn received them through its correspondent bank, issued its exchange in payment, but failed before the exchange was paid and hence the checks were charged back by the correspondent bank against "A's" bank, who in turn charged them back against "A." Would "A" have a preferred claim against the closed bank?

I have carefully read the headnotes of the case of Atlantic National Bank of Jacksonville vs. Frederick, decided April 26th, 1928, and while I have not had access to examine the main text of the opinion in that case, I am of the opinion that the principles announced in the Pratt case above referred to do not necessarily govern the hypothetical case which you mentioned.

It appears to me that in the hypothetical case you mentioned that no such equities exist as appear to have existed in the Pratt case and that, therefore, "A" would not have a preferred claim against the closed bank.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION, IF METHOD PROVIDED BY SEC. 705, R. G. S., IS APPLICABLE TO CERTAIN BUILDING AND LOAN ASSOCIATIONS

June 19, 1928.

Dear Sir:

I have your letter of May 9th, asking my opinion as to whether or not the method of taxation provided for by Section 705, Revised General Statutes, is applicable to taxes assessed against building and loan associations incorporated under the laws of Florida.

The only requirement of Section 705, relating to the payment of taxes by the corporation itself is that each "banking association" shall pay the taxes "as the agent of each of its shareholders," and that the said association may retain "so much of any dividend belonging to any shareholder as it shall be necessary to pay any taxes levied upon its shares."

Under Section 696, Revised General Statutes of Florida, personal property is defined as including "shares of all incorporated and unincorporated companies."

Section 715, Revised General Statutes, makes it the duty of every person owning or having control, management, custody, direction, supervision or agency of property to return the same for taxation to the county assessor of taxes in the proper county.

Section 705 *supra* provides that the owner or holder of stock in any incorporated company doing business under corporate name shall not be taxed for such stock provided the stock is returned for taxation by the company and taxes are paid therein by the company or the property of the corporation is assessed for taxes where located and taxes are then paid on the property.

After this follows certain special provisions relating to the assessment and collection of taxes upon shares of "banking associations organized within this State."

Considering the nature of a building and loan association as now created and defined by law and the provisions of our tax laws with reference to the taxation of shares of stock in incorporated companies, it appears that while the shares of stock in a building and loan association are taxable as personal property under a definition of personalty in Section 676, Revised General Statutes, that nevertheless the building and loan association is not required to return for taxation shares of stock or to pay taxes thereon, but may at its option leave such shares to be assessed for taxation in the names of the original owners and holders thereof wherever the same may be located.

In other words, it appears that a building and loan association which falls within the purview of the first portion of Section 705, which gives to a corporation in this State the right to return for taxation its shares of stock and pay taxes upon the same, in consideration of which the owner or holder of the stock would be exempt from taxation for such stock which has already been returned in the name of, and the taxes paid by, the corporation itself.

There is nothing to prevent a building and loan association returning its shares of stock for taxation and paying taxes upon same in behalf of individual shareholders and yet at the same time I find nothing in the statutes which makes it mandatory upon a building and loan association to do so.

Very truly yours,

FRED H. DAVIS, Attorney General.

BANKING COMPANIES—STOCKHOLDERS OF—STATUTE OF
LIMITATIONS

June 21, 1928.

Dear Sir:

I am of the opinion that under Section 4128, Revised General Statutes, construed in connection with paragraph 5 of Section 2939, Revised General Statutes, as to stockholders of banking companies who are responsible for contracts, debts and engagements of the company to the extent of the amount of their capital stock therein at par in addition to what they have invested by way of a statutory liability for assessment therefor, the statute of limitations governing liability under Section 4128 is three (3) years.

Such liability is a liability created by statute other than a penalty or forfeiture and, therefore, falls under Class 1, Paragraph 5, Section 2939.

Very truly yours,

FRED H. DAVIS, Attorney General.

REAL ESTATE—SALE OF FOR NON-PAYMENT OF TAXES—DATE
OF SALE

June 25, 1928.

Dear Sir:

I have your letter, requesting my opinion as to whether or not a tax collector who has proceeded in accordance with Section 756, Revised General Statutes of Florida, to advertise real estate to be sold for non-payment of taxes has the lawful authority to postpone said tax sale to a later date after the completion of the publication of the notice provided for by law.

Section 759, Revised General Statutes of Florida, reads as follows:

SALE OF LANDS FOR UNPAID TAXES.—On the day designated in the notice of sale, at 12 o'clock noon, the tax collector shall commence the sale of those lands on which taxes have not been paid as aforesaid, and shall continue the same from day to day until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, costs and charges thereon, and in case there are no bidders the whole tract shall be bid off by the tax collector for the State, and the tax collector must offer all such lands as assessed.

Under the provisions of said section it is my opinion that the tax collector is under the mandatory duty to proceed with the sale pursuant to advertisement made and that such tax collector has no authority to disregard proceedings theretofore taken by him by way of advertisement leading up to such tax sale.

In this connection, I beg to call to your attention the fact that the Supreme Court of Florida has held in a number of cases that tax proceedings are *in invitum* and to be valid must be *stricti juris*.

Failure to comply with the provisions of the tax laws will render the proceedings void and statutes providing for tax sales must be strictly construed.

It is, therefore, my opinion that when a tax collector has prepared and published the notice required to be given in the manner provided by Section 756, Revised General Statutes of Florida, that thereafter he has no option, but to commence the sale and carry out the same as required by Section 759, Revised General Statutes of Florida, above quoted.

The law does not fix the date for holding a tax sale, such choice devolving upon the tax collector in the performance of his duty.

Having once selected a date and given the requisite notice which is a condition precedent to the making of a sale, the tax collector's powers in the premises are *functus officio* and he is without power to disregard proceedings taken by him and to reset another date for the assessment and sale.

In any case where a postponement is authorized at all, it can only be accomplished by withholding the publication of the notice so that the day of sale might fall at a later period than would otherwise occur.

Should it be found after a notice has been published that such notice was not published as required by law and hence the notice already published would be void and might be disregarded, in this event the tax collector would have authority to readvertise and in such advertisement designate a later day of sale, but where the first notice is made out and published, the tax collector has no option but to proceed in accordance with the statute to execute the delegated authority conferred upon him in the manner laid down by the statutes for its exercise.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY DEPOSITORIES—TRANSMITTING WARRANTS

September 3, 1928.

Dear Sir:

I have your letter of August 25th, in which you asked my opinion as to the proper course your office should pursue in transmitting warrants to the various county depositories of Volusia county, Florida, and in which you asked whether or not under the existing law your office could send all the warrants payable to Volusia county to one county depository to the exclusion of the other eight designated, qualified depositories for county funds.

The matter in question is governed by Section 2404, Compiled Statutes of 1927, and the following sections.

The language of the law is that the county depositories thereby mentioned are not only authorized to receive county deposits, but are "entitled to receive public funds in the manner and methods" provided by law.

I find nothing in the statute which would render it invalid for your office to make remittance of all the county funds handled by you direct to the Volusia County Bank & Trust Company to the exclusion of the eight other designated depositories provided such course of remittance is consented to by the other depositories affected by such course of procedure.

However, in view of the language of the statute, which is to the effect that banks complying with the law and becoming county depositories are "entitled to receive" public moneys, I am of the opinion that in the absence of the consent of the other depositories involved that you should recognize the statutory right of the depositories and make remittances in such manner to said various depositories as will comply with the statutory intent and purpose, which is to have county deposits divided among the qualified banks equitably in proportion to each other.

I return herewith file in the matter.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX CERTIFICATE—REDEMPTION OF

Dear Sir:

September 4, 1928.

I am in receipt of your letter of August 27th, enclosing copy of a letter received by you from Karl B. O'Quinn, Clerk of Circuit Court of Pinellas County, with reference to the redemption of tax certificates.

The laws of this State on this subject are very much in confusion and Mr. O'Quinn's comments are timely.

My interpretation of the laws governing assessment of taxes is that where land is sold to the State for its taxes such land is nevertheless assessed each year thereafter in like manner as other property is assessed, with the exception that the amount of the taxes is not extended on the tax roll. In other words, the tax assessor should take the land which has been sold to the State and against which a State tax certificate has been issued, and put a valuation on such land in like manner as if it were the land of some private individual. The only thing he does not do is extend the amount of the tax against the land thus assessed by him.

It is absolutely essential that this be done because the Constitution requires a uniform and equal assessment of all lands for taxation. For the first two years, at least, after the lands of a private individual are sold such lands are in the aggregate body of taxable land of the county. Proceedings for the valuation of such lands on the tax books constitutes an assessment of the lands for taxation within the meaning of the law, and the fact that the amount of the taxes is not extended on the roll does not detract from the legality of such assessment.

The lien on land for taxes arises by operation of law, and even though no taxes whatever are assessed against the land, through error or omission, the lien for taxes for that year nevertheless exists and continues until satisfied by payment. It is on this theory that back assessments are permitted where there have been errors in the assessment.

Trusting this information will be of value and in the hope that some workable law will be drawn up and prepared for passage at the next session of the Legislature which will straighten out the whole matter of State tax certificates, as well as other tax certificates, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

GASOLINE TAXES, REFUNDS OF AMOUNTS COLLECTED ON SHIPMENTS IN INTERSTATE COMMERCE

Dear Sir:

September 4, 1928.

I have your letter of August 30th, transmitting letter received by you from the Sinclair Refining Company relative to taxes, alleged to have been unlawfully collected on sales of gasoline alleged to have been made in interstate commerce.

I find nothing in the correspondence you referred to me which would warrant you in making the refund contended for, although there may exist facts not stated or appearing which might warrant a different conclusion on my part, if those facts were made to appear.

I find nothing in the law which exempts from the payment of gasoline taxes a dealer who makes the sale of gasoline to a purchaser and intends to immediately ship it out of the State of Florida to another state.

The tax is levied and assessed against the seller as an occupational license tax because he is engaged in business in this State, and if the gasoline is sold in this State, although the purchaser intends to immediately take it out of the State, it does not exempt the dealer from the payment of the tax on his part.

If there were any such exemption, any motorist in Tallahassee who was filling up his tank to drive over to Thomasville would be entitled to the exemption.

Very truly yours,

FRED H. DAVIS, Attorney General.

GASOLINE DEALERS—EXEMPTION IN FAVOR OF DISABLED VETERANS.

September 7, 1928.

Dear Sir:

I have your letter of September 6th with reference to the construction of Chapter 12110, Laws of Florida, granting exemptions to disabled veterans of the World War, which has been construed by me in a letter to Hon. Howard Rowton, State Adjutant American Legion, under date of August 7th, last.

In the opinion referred to I stated that the exemption authorized by Chapter 12110 applies only to those occupational taxes provided for by general license laws for revenue purposes, and does not apply to dealers in gasoline. My statement in this regard had reference to the tax of 4 cents per gallon for every gallon of gasoline sold, but did not specifically refer to the license tax of \$5.00 which has to be paid by each individual dealer for maintaining a place for the dispensing of gasoline.

The Supreme Court of the United States has construed gasoline taxes imposed in like manner as those imposed by our statutes as being excise taxes levied on the transaction of sale rather than upon the individual occupation of the dealer, and on that theory has held that the United States Government is exempt from the payment of such taxes. It can readily be seen that if the Supreme Court of the United States has held that our gasoline tax is a tax upon the sale of gasoline by whomsoever made and is to that extent a tax upon the purchaser, as well as the seller, that Chapter 12110, Laws of Florida, cannot possibly operate to exempt disabled veterans from the payment of such tax.

However, insofar as the \$5.00 tax which is to be paid by each individual dealer is concerned, for the privilege of maintaining a pump for the dispensing of gasoline, it might be reasonably contended that such \$5.00 tax is in effect an occupational tax upon the dealer and that therefore a disabled veteran of the World War or a Spanish-American War disabled veteran might be exempted from the payment of this particular \$5.00 tax.

While this construction of the statute may be attended with doubt I am of the opinion that the benefit of the doubt should be given the disabled veterans, and accordingly that those who are entitled thereto should be allowed their exemption from payment of the \$5.00 tax referred to in Chapter 12037, Acts of 1927, amending previous acts imposing gasoline taxes.

At the same time I can find no support in the law for holding that such disabled veterans are exempt from payment of the 4-cent per gallon tax imposed for general revenue, nor the extra 1-cent tax for school purposes, as that particular tax has been very definitely and specifically held by the Su-

preme Court of the United States to be a sales tax resting as much upon the purchaser as upon the dealer.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GASOLINE AND OTHER LIKE PRODUCTS OF PETROLEUM—LICENSE
TAX ON DEALERS.

October 16, 1928.

Dear Sir:

I have your request of October 13th for my opinion as to the payment of license taxes under Chapter 10025, Acts of 1925, as amended, and Sections 896, 939, 804 and 926, Revised General Statutes of Florida.

Chapter 10025, Acts of 1925, and its 1927 amendment is a continuation of Chapter 8411, Acts of 1921, which was entitled "AN ACT imposing license taxes upon dealers in gasoline or other like products of petroleum."

The effect of Chapter 8411, as amended, is to impose an excise tax upon the sale of gasoline, which the Supreme Court of the United States has construed as being in effect a sales tax resting as much upon the purchaser as upon the seller, and, indeed, it is a matter of common knowledge that dealers of gasoline in this State purposely pass this tax on to the consumer without bearing any portion of it themselves.

I find nothing in Chapter 8411, as amended by Chapter 10025, as amended by the Act of 1927, which operates as a repeal of Section 896, Revised General Statutes of Florida, which imposes upon each wholesale dealer of gasoline a State license tax of \$10 in each county, and under Section 804 a county license of \$5, plus the county judge's fee.

I am, therefore, of the opinion that Section 896, Revised General Statutes, is still in force, notwithstanding Chapter 10025, Acts of 1925.

Section 939, Revised General Statutes, provides that each wholesale dealer in lubricating oils is to pay a State license tax of \$25, and under Section 804 a county license tax of \$12.50 plus county judge's fee.

This tax is levied against wholesale dealers who sell illuminating and lubricating oils which are different from gasoline, i. e., kerosene and crude oil, etc., as well as lubricating oils.

Section 929 is still in force and the tax therein provided for should be collected from the wholesale dealers who fall within the terms of the language of this section.

Section 926, R. G. S., provides that "merchants, druggists and storekeepers" shall pay certain license taxes as a merchant on the value of their stocks of goods.

I do not think that a dealer in lubricating oils or illuminating oils or gasoline would be considered a merchant, druggist or storekeeper under Section 926, and I am, therefore, of the opinion that Section 926 has no application to dealers in gasoline or other like products of petroleum or dealers in illuminating and lubricating oils who are subject to the taxes provided for in Chapter 10025, Acts of 1925, as amended, as well as Sections 896 and 939, Revised General Statutes.

Very truly yours,

FRED H. DAVIS, Attorney General.

LEGAL NOTICES—COST TO STATE.

November 8, 1928.

Dear Sir:

I have your request of November 7th, for my opinion as to whether or not Chapter 12215, Acts 1927, applies to legal notices or advertisements of elections, either general or special, and to the publication of constitutional amendments, as required by law.

In my opinion, Section 2944, Revised General Statutes, as amended by Chapter 12215, Acts 1927, has no application to legal notices published and paid for out of the State funds. The intention of the law, prescribing a legal rate of advertising was to protect members of the public who are compelled to have legal advertising done from the charging of an excessive price for same by the publishers of newspapers, and was not intended to apply to any advertising done by State officials and paid for out of State funds.

Payment of advertising charges out of State funds is governed by the law making the particular appropriation for payment of such advertising and the amendment of Section 2944, even if it applied to this class of advertisements could not legally have the effect of increasing the ordinary appropriation made by the Legislature based upon Section 2944, prior to the time it was amended.

Furthermore, the law requiring the publication of constitutional amendments and notices of elections contemplates the payment of uniform charges throughout the State and it is upon the basis that the charge will be uniform that the Legislature has made its appropriation for payment.

I advise, therefore, that I am of the opinion that the provisions of Chapter 12215, Acts of 1927, amending Section 2944, Revised General Statutes, insofar as they fix the legal rate for legal advertising, has no application to legal advertisements required and paid for by the State of Florida out of the State Treasury but that such advertising should be paid for on a uniform basis throughout the State, in accordance with the allowance made for such advertising under the law, fixing the appropriation for such payment.

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE, FINANCIAL SITUATION OF—PRIORITY OF CLAIMS

November 16, 1928.

Dear Sir:

I have your letter of November 5th, in which you advise me that the income of the State treasury is wholly insufficient at this time to meet the demands upon it in carrying out appropriations made by law and that it is obviously necessary that some means must be devised to take care of the situation.

I note your request for my opinion as to whether or not certain governmental agencies have prior claims on the available receipts that should be paid in full or whether funds in hand should be pro-rated upon an equal percentage to all.

I find that the same situation occurred in this State once before in the year 1908, and that by reason thereof the Legislature of the State of Florida

passed an act, which is now embraced in the Statutes of Florida as Sections 1052 and 1053, Revised General Statutes. These sections read as follows:

1052. BOARDS AND OFFICERS NOT TO MAKE CONTRACT FOR EXPENDITURES WITHOUT ASCERTAINING IF FUNDS AVAILABLE.—That no board, department, officer, commission, or committee or other person or persons charged under the provisions of any act of the Legislature with the expenditure of any money payable out of the general revenue fund shall make any contract or incur any obligation for the payment of any sum out of the treasury of the State of Florida, except for the salaries of public officers and other current expenses of the State except expenses of operation of schools, without first ascertaining from the Board of Commissioners of State Institutions that the funds necessary to meet such payments will be available when the same shall become due and payable and constitute a charge against the State.

1053. SCHOOL APPROPRIATIONS TO HAVE PRIORITY.—Appropriations made for school purposes under any act of the Legislature shall be payable out of the first funds available under the provisions of this Act, after payment of the salaries of public officers, and other current expenses as hereinbefore provided, and the moneys for such appropriations shall be available as fast as they come in without waiting for the whole amount of any such appropriation to be received into the treasury.

I further find that shortly after this Act was passed it was construed by former Attorney General William H. Ellis, who is now Chief Justice of the Supreme Court. In this connection, former Attorney General Ellis, in an opinion dated August 15th, 1907, rendered to Hon. H. D. Croom, Comptroller, used the following language:

The purpose of this Act is obvious. The necessity for careful, prudent management of the general revenue fund became apparent to the Legislature; it was evident that the general revenue fund was insufficient to meet the appropriation made from it, in excess of the current expense of the State, so that it became necessary for the welfare of the State that no contract should be made nor obligation incurred for the payment of money from that fund, except for the current expenses of the State, not including appropriations for school purposes, until the Board of Commissioners of State Institutions should say that the funds would be available to meet the proposed obligation when the same should become due.

It is my opinion that every proposed expenditure from the general revenue fund, including the appropriations for school purposes, which cannot be classed as current expenses for salaries of public officers, is prohibited by the terms of this Act until the Board of Commissioners of State Institutions authorizes such expenditure by stating that the funds are available or will be when the obligation becomes due.

The term "current expenses of the State," as used in the first section of the Act, means the usual, ordinary or running expenses of the State. An expense which is fixed not in amount but in character, such as the expense of maintaining the different departments of the

government, collection of revenue, maintenance of the Florida Hospital for the Insane, maintenance of the free school system. Other expenses are not current but extraordinary, unusual. The erection of buildings, the purchase of building sites, appropriations for the Governor's Mansion, for a lock in Hicpochee canal, for printing Supreme Court reports, for a monument at Chickamauga, for relief of Daniel Campbell and other trustees, to aid the Florida State Mid-Winter Fair Association and to aid the West Florida Fair Association are, in my opinion, unusual or extraordinary expenses, and are not part of the current expenses of the State. The expense of preparing agricultural statistics under Chapter 5609, and the expenses incurred for the yearly encampment of the State troops are current expenses within the meaning of the Act.

In another opinion rendered July 31st, 1908, to the Adjutant General of Florida, Mr. Ellis said:

The term "current expenses" of the State, as used in Sections 1 and 2 of the Act, in my opinion, means the usual, ordinary or running expenses of the State government. *Sheldon vs. Purdy*, 49 Pac. 228; *State vs. Board of Education*, 53 Atl. 236.

As a general principle of law, a departmental interpretation of a statute governing the powers and duties of officers enters into and becomes, to a large extent, a part of the law itself.

I am, therefore, of the opinion that the construction of this statute placed thereon by former Attorney General Ellis should be followed and that this requires an answer to your question to the effect that where funds in the general revenue fund of the State are insufficient to meet all claims against such fund the salaries of public officers and other current expenses of the State have a prior claim upon the available moneys in the treasury and should be paid in full before any other expenses or appropriations are recognized.

Very truly yours,

FRED H. DAVIS, Attorney General.

GASOLINE—TAX ON SHIPMENT TO GEORGIA

December 6, 1928.

Dear Sir:

I note your request of November 21st for my opinion upon the liability of the Sun Oil Company of Jacksonville, Fla., for inspection of gasoline taxes upon transactions had with one C. H. Rabon, wholesale dealer in gasoline, with base of operations in Jesup, Ga., who desires to market his product in Florida under an arrangement with the Sun Oil Company without paying the gasoline tax or the inspection tax to the State of Florida.

From the facts stated in the correspondence, it appears that Mr. Rabon sends to Jacksonville with his trucks and there purchases gasoline from the Sun Oil Company, to be by him transported into Georgia and there sold to local dealers.

On the other hand, if an order is sent from Georgia into Florida for a shipment of gasoline, having in contemplation the transportation and delivery of such gasoline to the purchaser in Georgia, then such transaction constitutes one in interstate commerce and only the inspection tax can be collected.

In regard to the inspection tax, it must be borne in mind that this tax

is collectible upon all gasoline handled in the State of Florida regardless of whether it is in interstate commerce or not, as there is no prohibition in the Federal Constitution which forbids a State from enforcing its inspection laws even as against interstate commerce, provided unreasonable taxes for such inspection are not levied.

As I have stated above, it clearly appears that delivery of the gasoline sold to Mr. Rabon is being made to him in Jacksonville. The transaction at Jacksonville is, therefore, complete and the mere fact that Mr. Rabon later moves the gasoline delivered to him for sale into Georgia is immaterial and no attempt is made by the State to collect a tax upon such movement of the gasoline.

The tax is assessed and collected against the *sale and delivery* to Mr. Rabon at Jacksonville, and the interstate commerce or intrastate character of the commodity does not begin under the circumstances outlined in your request for my opinion until after the whole transaction which is the subject of the tax is fully completed.

This opinion does not cover a transaction where an order is sent from Georgia to Florida, to be filled by the Florida company by making delivery to purchaser in Georgia.

Very truly yours,

FRED H. DAVIS, Attorney General.

GASOLINE TAX ON GASOLINE TO BE TRANSPORTED TO BAHAMA
ISLANDS

December 7, 1928.

Dear Sir:

I am of the opinion that gasoline sold in Jacksonville by a wholesaler in Jacksonville such as the Sun Oil Company to the gentleman who owns and operates a schooner between Jacksonville and the Bahama Islands is liable for the State of Florida sales tax of five (5c) cents per gallon, where the gasoline is purchased in Jacksonville and transported to West End, in the Bahama Islands, for resale to jobbers in that territory.

In such event the transaction or sale which is the subject of the tax is complete with the delivery of the gasoline to the purchaser at Jacksonville, and the mere fact that he intends to transport such gasoline to some other state or territory to be sold there and disposed of by him is immaterial as altering the nature of the original transaction.

Trusting this answers your inquiry of the 4th inst. for my opinion in the premises, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR—OFFICE EXPENSES.

December 7, 1928.

Dear Sir:

I have your request of November 28th, in which you ask my advice as to whether or not office help, phone bills and office supplies are to be paid by the tax assessor or by the County Commissioners; also whether or not the County Commissioners are supposed to pay for office machines, desks, plats, expressage on machines and transfer charges.

Your inquiry seems to be answered by the provisions of Chapter 11954, Laws of Florida, Acts of 1927, relating to compensation of county officials.

This act provides that the county tax assessor, as a county official, shall receive certain stated sums as compensation out of the fees collected by him after deducting all reasonable expenditures for the salaries of clerks, assistants and the necessary expenditures for the proper operation of his office. See Section 2 of the act. Under this statute it is the duty of the county tax assessor to pay for all his help, phone bills and office supplies.

Answering the second question as to whether or not it is the duty of the County Commissioners to pay for office machines, desks, plats, expressage and transfer charges on machines, I beg to advise that this question is likewise answered by Section 4 of the act, which provides that the surplus of fees paid to county officers after deducting their compensation shall be paid into a special fund, which the Board of County Commissioners shall create and shall expend the proceeds thereof for the purpose of equipping, maintaining and supplying offices from which the money is derived with the necessary books, furniture, fixtures and all other things supplied or furnished by the County Commissioners and paid from the general revenue of the county.

Under the act in question, the County Commissioners can administer the same in either of two ways, it appears to me.

First, by having the county tax assessor purchase all of the machines, desks, plats, etc., out of his fees and allowing him credit for same as a necessary expenditure for the proper operation of the office under Section 2 of the act; or

Second, by paying for same out of any surplus which may be turned in by the tax assessor after deducting his compensation and expenses for salaries of clerks and assistants under Section 4 of the act.

The result is the same, either way the act is administered.

In regard to paying interest upon the unpaid amount due Hon. Thomas A. Hughes, deceased, tax assessor, on 1927 commissions, I beg to advise that I fully agree with your opinion that no interest can be paid on this amount of money.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—THEATRICALS, ETC., IN FAVOR OF FRATERNAL ORGANIZATIONS.

December 24, 1928.

Dear Sir:

Your letter of December 11th, relative to liability of shows for license taxes where the shows are held under the auspices of fraternal organizations, has not been earlier answered because of my absence from the city.

I now beg to advise in regard to the matter as follows:

Sections 1244 and 1245, Compiled Laws, 1927, originally Sections 972-3, R. G. S., are the statutes applicable to license fees for shows.

Section 1245 contains the following proviso:

* * * that this section shall not apply to any hall owned

or used by any charitable or fraternal organization giving performances or exhibitions for their own benefit.

The pertinent difference between these two sections, it will be noted, is that Section 1244 applies to shows of all kinds, including circuses, vaudeville, minstrels or any exhibition giving performances under tents or temporary structures of any kind, whether tents or structures are covered or uncovered, while Section 1245 relative to theatrical shows or traveling plays or minstrels in buildings fitted up for such shows or exhibitions, the amount of license being determined by each performance.

Inasmuch as there is no exception or exemption for fraternal organizations such as the Moose, Elks, American Legion, Masons, Odd Fellows, Knights of Columbus, etc., to operate the class of shows which are subject to Section 1245 (972 R. G. S.) Compiled Statutes 1927, which are shows under tents or temporary structures as distinguished from buildings, there is no exemption.

These fraternal organizations—if they conduct such shows are as much liable for the taxes provided for by that section as any other person, firm or corporation would be, even though the proceeds of the shows are to a large extent turned into the fraternal organizations and used for the fraternal purposes.

On the other hand, it is expressly provided that when a show is given in buildings fitted up for such shows or exhibitions the license provisions of Section 1245, which relate to such shows shall not apply to any hall owned or used by any charitable or fraternal organization giving performances or exhibitions for their own benefit.

Under the last mentioned section, I am of the opinion that where a show is given in a building fitted up for such shows or exhibitions in a hall owned or used by any charitable or fraternal organization, where the proceeds of the show go entirely to the charitable organization sponsoring the same, such show or exhibition is not subject to a State or county license tax even though it may appear that by reason of some contract between the fraternal organization and the show that a certain amount—either definitely agreed upon or contingent upon the gate receipts realized from the show, is paid to the theatrical performers but under all other circumstances the tax is applicable and should be collected.

It was not, and is not, the purpose of the statutes to allow shows subject to these license taxes to evade payment of the same by giving a small portion of their proceeds to some benevolent or charitable organization. The exemption provided for, where it is applicable at all, only refers to cases in which the fraternal organization is giving the show, either through the medium of its own players or through players under contract of employment to give an exhibition for such organization in a hall owned or used by such charitable or fraternal organization.

It will be noted in this section that the hall in question may be "owned" or it may be "used" by the charitable or fraternal organization in question.

On the other hand, tent shows or shows under temporary structures of any kind are not within the purview of any specific exemption even when they are given under the auspices of charitable or fraternal organizations, and in all cases the tax provided for by Section 1244 is applicable and should be

collected unless the fraternal or charitable organization in question has taken out a license for operating an amusement park under Section 1080, Compiled Stats. 1927 (Sec. 824, R. G. S.)

Where a fraternal or charitable organization operates a permanently located amusement park within which are operated merry-go-rounds, roller coasters, theatrical and other exhibitions, shows and performances, etc., it is permissible for them to pay a State license tax of \$100 for the privilege of operating such devices, shows, exhibitions and other forms of diversion and amusement as may be permanently in such parks.

In this connection, it will be noted that the amusement park in question must be permanently located and some form of diversion or amusement must be permanently carried on in such park although it is not essential that the same particular show shall be carried on permanently. The statute merely provides that the forms of diversion and amusement of some kind shall be permanently carried on.

The amusement park section is applicable to such tent shows or shows under temporary structures as would otherwise be subject to Section 1245, where there is no amusement park license involved.

Where the tax collector refused to collect license tax under the General License Tax Law, I am of the opinion that the Comptroller is without authority to issue a tax warrant under Sections 1272-3, Comp. Stats. 1927, but that the matter will have to be handled by prosecution or action taken by local authorities direct with the courts to punish the person engaged in doing business without a license.

In this connection, it will be noted that in order to render Sections 1272-3 applicable, it is necessary that the tax sought to be enforced by warrant be payable either to the State Treasurer or to the Comptroller, and as license taxes are in no instance payable under the license law directly to the State Treasurer or Comptroller they are without jurisdiction to enforce the same by tax warrant under these sections.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

DEFUNCT BANKS—CLAIMS AGAINST, PREFERENCE

December 31, 1928.

Dear Sir:

I have your letter of the 21st inst., submitting for my consideration and opinion two hypothetical questions with reference to situations created by bank failures and with which your department deals.

These questions are general in character and it might be well to give you a few principles of law established by some of the courts of the country which, in my opinion, are of respectable authority, as follows:

1. A general deposit of money in a bank passes the title immediately to the bank and establishes the relation of debtor and creditor between the bank and the depositor.

2. A bank receiving a draft for collection merely is the agent of the remitter, drawer or forwarding bank and takes no title to the paper or proceeds when collected but holds the same in trust for the remitter.

3. When a bank receives from its correspondent a check upon itself, it is an agent for its correspondent to make a presentation to itself.

4. Where remittance method is used by two banks when one bank cashes a check upon itself for its correspondent, the proceeds are impressed with a trust and the relation of debtor and creditor does not arise though the bank retains the actual cash and sends draft to correspondent bank upon deposit in another bank.

5. Where a bank holds money in trust for another bank, the mingling of trust funds with general funds does not destroy the trust but serves to extend the trust or lien to the whole mass of money.

6. Where collecting and paying bank remit to other bank by draft on third bank, such draft was an equitable assignment of funds in the latter bank on the theory that equity regards that as done which ought to have been done.

7. Where a draft, drawn on a bank which had sufficient funds on hand to cover and pay it, was forwarded by plaintiff bank to drawee bank for collection and remittance, it will be presumed that the latter performed its duty and paid the draft on presentment and held funds in trust for plaintiff under the rule that equity regards that as done which ought to have been done.

8. A bank accepting a draft drawn on it for collection is regarded as holding the amount of draft as agent for sender and on its insolvency the assets passing to Commissioner of Finance (or State Comptroller) are regarded as increased by the amount of draft despite the fact that funds remain commingled with other funds of bank and may be recovered in full.

As authority for the general proposition above submitted, see:

State National Bank of Little Rock vs. First National Bank of Atchison, Kansas, 134 Ark. 531, 18 S. W. 673; Bank of Poplar Bluff vs. Millspaugh, 313 Mo. 412, 281 S. W. 733; 47 A. L. R. 754; Federal Reserve Bank vs. Peters, 139 Va. 45, 123 S. E. 379; 42 A. L. R. 742.

In order to answer your first question, it is necessary to assume certain premises:

If the check drawn on C bank by D and deposited by A in B bank was forwarded by B bank to C bank for collection and remittance only, which was charged to D's account by C bank and draft sent by C bank to B bank, C bank having issued to D bank its draft covering the remittance for said check but failing before the same is paid, the amount of such remittance thereupon became impressed with a trust which followed same into the hands of the receiver of C bank provided the assets of C bank remain at all times from the time of such remittance down to the time the assets of C bank were placed in the hands of such receiver equal to the amount so remitted; and the same would be a preferred claim over the general creditors of C bank.

Answering your second question, it is my opinion that if A company sends a draft, bill of lading attached, to B bank for collection and remittance only on C and C pays the draft by a check drawn on B bank, having sufficient funds in B bank to pay same and B bank forwards its remittance to A company but closes prior to same being paid, that same constitutes a preferred claim against B bank provided the funds of B bank at the time of its failure are equal to the amount of the remittance.

Respectfully submitted,

H. E. CARTER, Assistant Attorney General.

STATE TREASURER.

ACCIDENT INSURANCE POLICIES—INSURING CUSTOMERS

February 1, 1927.

Dear Sir:

I am in receipt of your favor of January 9th, as follows:

I enclose herewith copy of a letter from Mr. T. M. Shackleford, Jr., Tampa, Florida, together with copy of letter from * * * Company, cigar manufacturers, to Mr. Shackleford, outlining a plan on the part of * * * Company to give certain customers an accident insurance policy.

I am further advised that this policy would be supplied * * * Company by the insurance company at a lower rate than to the public generally.

Under date of August 16th, 1296, you advised me that paragraphs 1 and 3 of Section 4268, Revised General Statutes of Florida, apply only to life insurance companies, while paragraph 2 of said Section 4268 applies to all insurance companies.

Will you now kindly advise me in writing whether the plan proposed by * * * Company referred to herein is in violation of said Section 4268, Revised General Statutes of Florida, or any other provision of our State laws. I would also appreciate your advising if the anti-discrimination provision in the first paragraph of said section applies to accident policies issued by life insurance companies, or only to life endowment policies.

I note that * * * Company is not writing the accident insurance he proposes to furnish to his regular customers. I also note that he is not the agent of the insurance company, writing this insurance.

In considering the provisions of Section 4268, Revised General Statutes, we can eliminate * * * Company in this construction, he not being an agent for the insurance company writing the insurance. This being true, we must then construe this statute as it applies to the company writing the insurance furnished by * * * Company.

The insurance company is only interested in securing insurance. * * * Company would have the right to take out policies of insurance for their customers and to give such policies to them free of charge if they saw fit. The contract of insurance would not be between the insurance company and * * * Company, but would be between the insurance company and the standing order of customers of * * * Company, the individuals who are insured.

If * * * Company, under an agreement with the insurance company, secures this insurance at a lower rate than is being paid by individuals who apply for and secure this insurance, I am inclined to the opinion that the provisions of the statute would be violated. If * * * Company pays for each policy the same rate as is being paid by individuals, then there could be no objection to this plan. If * * * Company secures this insurance at a lower rate and thus furnishes it to the outstanding customers then I am inclined to think that the provisions of the statute would be violated.

Very truly yours,

J. B. JOHNSON, Attorney General.

REINSURANCE—PREMIUM TAX

April 30, 1927.

Dear Sir:

I am in receipt of your favor of the 30th inst., as follows:

I am in receipt of a letter dated 28th inst., from * * * Insurance Company, Inc., Miami, Florida, which reads as follows:

"Last June, Mr. Grover, secretary of the * * * Insurance Company, visited Miami regarding giving the * * * Insurance Company a reinsurance contract. At the time he stated he would have to pay the two percent (2%) State tax if any was charged the * * * I wired you regarding this matter and received telegram from you, stating as follows:

"INSURANCE COMPANIES INCORPORATED UNDER THE LAWS OF FLORIDA ARE EXEMPT FROM ALL TAX ON PREMIUM INCOME."

"The * * * Insurance Company paid you the sum of \$1,152.60 and charged same to our account. We naturally cannot stand this from the * * * and they state that if Florida companies are exempt from this tax, they will return it to us and get you to reimburse them.

"Won't you kindly advise me at your earliest opportunity regarding this matter and greatly oblige."

Assuming the correctness of this statement that \$1,152.60 of the premium tax paid to the State of Florida by the * * * Insurance Company of New York, was on account of reinsurance ceded to said * * * Insurance Company by * * * Insurance Company, Inc. (a Florida Corporation), does the exemption from premium taxes afforded insurance companies incorporated under the laws of Florida by Chapter 10150, Acts of 1925, apply also to premium taxes payable by foreign insurance companies on so much of their premiums as may be accepted from insurance companies incorporated under the laws of Florida?

This department had no knowledge at the time the premium tax was paid by the * * * Insurance Company of New York that any part of said tax was based upon reinsurance accepted from an insurance company incorporated under the laws of Florida. If the tax on such premiums was not properly chargeable to the * * * Insurance Company I will be glad to recommend such legislative action as may be necessary to bring about a refund with the * * * Insurance Company of such amount as may be ascertained to have been paid by such company in error, making payment to the State of Florida of premium taxes based upon premiums received in this State during 1926.

Thanking you for your advice in the premises, I am,

Chapter 911 of the Revised General Statutes, as amended by Chapter 10150, Laws of Florida, Acts of 1925, provides: That in addition to the license taxes provided for, insurance companies are required

to pay to the State Treasurer two percent of the gross amount of receipts of premiums on policy holders in Florida, less return pre-

miums and premiums for re-insurance in companies authorized to transact business in Florida, the tax upon such premiums for re-insurance to be paid by the company or association accepting such re-insurance. * * *

As I construe this provision, the * * * Insurance Company would be required to pay the two percent upon the policy of reinsurance issued to the * * * Insurance Company, a Florida corporation. You will note in this provision that—

* * * the tax upon such premiums for re-insurance to be paid by the company or association accepting such re-insurance. * * *

The proviso at the end of this section reads:

* * * That no taxes imposed in this section shall apply to mutual insurance companies organized and doing business in this State, nor shall any company or association, firm or individual, organized and doing business under the laws of this State, be required to pay any tax upon the receipts of premiums from policy holders in Florida.

Under these provisions any insurance company, association or individual not organized under the laws of the State of Florida is liable for the two percent tax for all reinsurance accepted by them in this State.

Under these provisions the * * * Insurance Company would be liable for the two per cent on the reinsurance accepted by them covering policy holders in Florida.

Very truly yours,

J. B. JOHNSON, Attorney General.

GASOLINE TAX

August 2nd, 1927.

Dear Sir:

I have your letter of July 27th transmitting to me a letter from Mr. W. W. Zachery, district manager for the Standard Oil Company of Florida, and which you request my opinion as to liability for gasoline tax upon sales of gasoline made in this State. I might answer this question in short by stating that the gasoline tax law applies to every sale or transaction relating to the sale of gasoline made in the State of Florida except those transactions which are clearly matters of interstate commerce, the burden of proof being upon the party who claims that the transaction is one in interstate commerce, to establish such fact. If a sale of gasoline is made in Florida which contemplates that the order shall be filled by a specific shipment made from some point outside of Florida to the consumer in Florida, such sale is one in interstate commerce and is exempt from the gasoline tax but not from the inspection tax. However, it would have to appear that the order was filled by a specific shipment of gasoline originating at some point outside of the State of Florida and shipped into the State of Florida. If the order was filled from storage tanks in Florida it would be liable for the gasoline tax.

I do not think the manner in which the price of gasoline is arrived at, whether f. o. b. at Savannah, Georgia, or delivered at some point in Florida, is in any sense a determining factor in the matter. On the contrary, the determining factor is whether or not the sale made contemplates the order being filled by a specific shipment of gasoline from a point outside the State

of Florida to a point in the State of Florida, in which event, regardless of how the price is determined or quoted, the sale is one in interstate commerce and the tax is not collectable.

I return herewith the letter from Mr. Zachery.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

ACCIDENT INSURANCE, TRAVEL

February 6, 1928.

Dear Sir:

I beg to acknowledge the receipt of your communication of February 1st, enclosing letter from the Jacksonville Insurors Association, Inc., 25 North Ocean street, Jacksonville, Fla., dated January 27th, transmitting advertisement of a travel insurance policy which is being offered to subscribers to the Jacksonville Journal.

Basing my opinion upon what has been presented to me for consideration and no more I am unable to find wherein anything contained in the advertisement submitted by the Jacksonville Insurors Association, Inc., violates the provisions of Section 4268, Revised General Statutes of Florida.

It is possible that other factors may enter into the consideration of this matter which would demonstrate that the plan being carried out by the insurance company in question through the Jacksonville Journal is in fact a violation of said section, but I am unable to so find from the single pamphlet which is enclosed with your communication.

It does not appear that the insurance company in question is giving or offering to give a subscription to the Jacksonville Journal in connection with the issuance of its policies, nor does it appear from the pamphlet that the price of a subscription to the Jacksonville Journal is to be a part of the consideration for the issuance of the policy of insurance mentioned; nor does it appear that the rate of 95 cents per thousand charged for the insurance is not the regular rate which would be charged irrespective of whether or not the insured became a subscriber to the Jacksonville Journal in connection with obtaining the insurance.

Section 4268, Revised General Statutes of Florida, undoubtedly prohibits:

1. Rebates of premiums or parts thereof, including agent's commission.
2. The giving of any valuable consideration or inducement for insurance which is not specified, promised or provided for in the policy of insurance.

This would include giving away a newspaper's subscription by the insurance company as an inducement to a person to take out a policy of insurance unless such newspaper subscription were promised and provided for in the policy itself.

3. The selling or promising as an inducement to insurance or in connection therewith of any stocks, bonds, security, property, dividends or profits accruing or to accrue thereon.

4. The offering, promising or giving of any other thing of value whatsoever as an inducement to insurance.

If the investigation of the arrangement between the Jacksonville Journal and the North American Accident Insurance Company referred to discloses that any of the prohibited acts above mentioned are being done then the plan of operation would be in violation of Section 4268.

I would suggest an examination of the policy being issued by this company as one of the means to determine whether or not this section is being violated.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

RECIPROCAL INSURANCE CO.—LIMITED LIABILITY

May 29, 1928.

Dear Sir:

Answering your letter of May 21st, I beg to advise that I think you are justified in issuing a certificate of authority under Section 4297, Revised General Statutes, to reciprocal insurance company even though the policy-contracts are agreements which purport to limit the liability of subscribers to specific amounts.

I find nothing in the statutes of Florida relating to reciprocal or inter-insurance exchanges which operates as a prohibition against such limitation of liability.

Very truly yours,

FRED H. DAVIS, Attorney General.

RECIPROCAL INSURANCE COMPANY—SALESMEN AND SOLICITORS—
LICENSE

August 11, 1928.

Dear Sir:

I have your letter of August 8th, in which you referred to Section 4298, Revised General Statutes of Florida, and requested my opinion as to whether or not a salesman or solicitor employed directly by the agent of a reciprocal insurance company, which agent is responsible for the acts of such salesmen or solicitors, as, in the meaning of Section 4298, such an agent of a reciprocal or inter-insurance exchange as would be subject to the \$25 license tax as such under Section 4298, Revised General Statutes of Florida.

The license tax in question is applicable to each agent, who, by the terms of his employment is, by his employer,

authorized to write insurance in this State,

and my answer to your question is that if the salesmen or solicitors employed by the agents of the reciprocal insurance company you mentioned are by the terms of their agency or employment,

authorized to write insurance in this State,

they are thereby subject to the required license tax of \$25.00.

As I have pointed out, however, it is only those agents who are, by their employers,

authorized to write insurance in this State,

who are subject to the tax imposed, and if there are agents or solicitors who are employed or appointed but who are not "authorized to write insurance in this State" in their own right as such agents although possibly performing other functions of agency than writing insurance, such last mentioned salesmen or solicitors would not be subject to the license tax of \$25 imposed by Section 4298.

Whether or not a particular salesman or solicitor falls within one or the other classification above mentioned is to be determined by whether or not under the terms of his employment or agency he is "authorized to write

insurance in this State," and this being a question of fact rather than a question of law it would have to be determined by the consideration of the particular terms of agency or employment in each case.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

• SURETY COMPANY—REVOCATION OF LICENSE TO DO BUSINESS IN
FLORIDA

August 16, 1928.

Dear Sir:

Section 4341, Revised General Statutes of Florida, 1920, reads as follows:

In event any fidelity insurance company, or other corporation or company doing a fidelity insurance business in this State, shall become surety on any of the bonds or obligations mentioned in this chapter, such corporation or company shall be subject to be sued on such bonds or obligations, in the county of the residence of the principal of such bond or obligation; Provided, That said companies, before beginning business in this State, or signing any bond, shall obtain a license from the State Treasurer, which license shall be revoked if said company begins any suit in the United States court as to any bond they are surety upon, or to remove or cause to be removed any suit thereto.

In passing upon a similar statute of the State of Arkansas, the United States Supreme Court, in the case of Terral vs. Burke Construction Co., 257 U. S. 529, 66 L. Ed. 352, held:

A state may not revoke a license to a foreign corporation to do business within the state, whether its business be state or interstate, merely because it brings an original suit in a Federal court, sitting in that state, or removes to that court a suit brought against it in a state court.

In my opinion, the foregoing holding of the Supreme Court of the United States is an adjudication by the highest authority to the effect that the provision of the Florida statute above referred to is invalid and cannot be enforced insofar as it undertakes to authorize or require the State Treasurer to revoke the license of a foreign insurance corporation to do business in this State because such company undertakes to remove a suit in which it is a party from the State to the United States courts for trial, as authorized by the Federal statutes.

I am, therefore, of the opinion that you would have no right to revoke the license of an insurance company to do business in Florida because of its violation of the foregoing provisions of Section 4342, which prohibits such companies from removing suits against them from the State to Federal courts.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

INSURANCE AGENTS—LICENSES

October 1, 1928.

Dear Sir:

On September the 17th Hon. J. C. Luning, former State Treasurer, now deceased, addressed a letter to me in which he requested my opinion as to

whether or not Chapter 7868, Acts of 1919, Laws of Florida, has been repealed by the provisions of Chapter 10153, Acts of 1925, Laws of Florida, and if not, what provisions of Chapter 7868 are in full force and effect.

The 1925 Acts are included in the new compiled statutes of 1927 as Section 6208 to 6212, inclusive, and also in Section 7454. No part of Chapter 7868 is included in the new compiled statutes on the theory that Chapter 10153 has superseded and repealed said Chapter 7868.

My opinion in the matter is that the theory of the publishers of the new compiled statutes is correct and that Chapter 7868, Acts of 1919, has been repealed and superseded in its entirety by Chapter 10153, Acts of 1925.

Another opinion requested by Mr. Luning was whether the State Treasurer has authority to revoke a license issued to any insurance company under the provisions of Section 5736 and 5737, Revised General Statutes of Florida, until after such company, association or agent has first been convicted of a violation of such sections in a court of competent jurisdiction.

In my opinion under Sections 5736 and 5737 the State Treasurer has no right to revoke the license referred to unless and until the company, association, agent or broker in question has been convicted of a violation of one of these sections.

In fact, the language of the statute very plainly says that the State Treasurer shall have authority to revoke the license theretofore issued to any company, association, agent or broker "convicted" of a violation of the section in question.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

BANKS—DEPOSIT WITH STATE TREASURER FOR BENEFIT OF TRUST BUSINESS

November 28, 1928.

Dear Sir:

I have your inquiry of November 28th in which you ask my opinion as to whether or not under Section 4188, Revised General Statutes of Florida, a deposit made with the State Treasurer in a sum equal to 25 percent of the paid in capital stock in order to authorize a bank to do the business of a trust company becomes a general asset of the bank or whether or not such 25 percent is to be held as security for the execution of trusts.

In my opinion the requirement of Section 4188 that trust companies shall deposit with the State Treasurer a sum equal to 25 percent of their paid in capital stock is for the benefit of the trust business conducted by the trust company. Banks are authorized to do a trust business by complying with the same laws as applicable to trust companies organized solely to transact a trust business and in dealing with the trust business done by a bank in its capacity as a trust company the banking department should be considered as being entirely disconnected with the trust business insofar as this deposit made under Section 4188 is concerned.

Should the trust obligations of the bank be fully performed then of course the deposit would revert and become a general asset of the bank, but until the trust obligations are performed in full such deposit is not an asset of the bank except as to any surplus of same as may exist over and above trust obligations.

Yours very truly,

FRED H. DAVIS, Attorney General.

INSURANCE AGENTS—ISSUANCE OF RENEWAL LICENSES—DISCRETION OF INSURANCE COMMISSIONER

December 27, 1928.

Dear Sir:

I have your inquiry of December 11th, in which you request me to advise you as to whether or not under Chapter 10153, Acts 1925, Laws of Florida, or any other statute now in force in this State you have, as State Treasurer, to exercise discretionary power in the issuance or renewal of insurance agent's licenses or whether it is incumbent upon the State Treasurer to issue such licenses upon the filing by applicants of the affidavit and certificates of qualification required under Chap. 10153, Laws of Florida, and by payment by company or association, requesting such license of State license tax required by law.

Chap. 7868, Acts of 1919, conferred discretionary power upon the State Treasurer with reference to determining the qualifications of applicants for insurance agents' licenses.

Provisions of the law relating to licenses for insurance agents have been carried forward into the Compiled Statutes of 1927 as Sections 6207 *et seq.* of that work. The compilers of statutes took the view that Chapter 7868 had been repealed by Chap. 10153 and I concur with that view in my former opinion rendered on October 1st, 1928.

If, as a matter of law, the Legislature has made an express repeal of a statute which gave the Insurance Commissioner discretionary power to withhold the issuance of licenses I do not think it could be fairly said that what has been done directly should be considered as undone indirectly by any implied provision of the later Act on the subject.

It must, accordingly, be held that there is now no power in the State Treasurer, acting as Insurance Commissioner, to exercise any discretionary power in the issuance or renewal of insurance agents' licenses but that it is incumbent upon the State Treasurer to issue such licenses upon the filing by applicants of the affidavits and certificates of qualification required by law.

At the same time, Section 6210, Compiled Laws, 1927, provides that the Insurance Commissioner may require such information properly vouched for by the persons designated by law, setting forth that the applicant is of good business reputation and is worthy of the license. The Insurance Commissioner is the judge of whether or not the evidence submitted under this Section is sufficient to show to him that the applicant is of good business reputation and is worthy of the license; and when the Insurance Commissioner is clearly convinced such applicant is not of good business reputation and is not worthy of a license, I am of the opinion that he may lawfully refuse to issue the license.

The Insurance Commissioner can lawfully refuse to issue such license in any case where the applicant does not establish the fact that he was of good business reputation and worthy of a license even though applicant may have submitted some proof to that effect in a form colorably in compliance with the law. See *State ex rel. Riley vs. Cawthon*, 103 So. 628.

The license once having been issued, however, there is no authority under the present law to revoke the same during the time for which it was

issued to run but when it is sought to be renewed at the end of the next ensuing license period, the Insurance Commissioner has power to refuse to renew it where he is affirmatively satisfied that the applicant is not of good business reputation and worthy of such renewal.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

MORTGAGES FOR DEPOSIT AS SECURITY DEFINED

December 27, 1928.

Dear Sir:

Section 6131 (4188, R. G. S.), Comp. Laws, 1927, provides that trust companies shall deposit with the State Treasurer a certain amount of securities in the form of bonds, stocks or other securities of equal market value, which shall include approved mortgages or deeds of trust of real estate, to be kept by the State Treasurer in trust for the depositing company for which the State Treasurer shall give his official receipt, embracing a full and complete list of such securities, and the values of same at the time received, which values shall be fixed by the Treasurer, Attorney General and Comptroller.

Said securities are required to be held subject to the payment of any judgment or decree which may be rendered against the trust company.

A reading of the section in question will demonstrate that the obvious purpose of the statute was to have the Treasurer hold the securities mentioned as collateral to the obligation provided by statute to be secured.

The mortgages referred to mean mortgages which fall within the general designation of securities deposited by way of collateral as would be the case of bonds or stocks which are also mentioned in the statutes.

I am of the opinion that there is no way in which the statute could be possibly construed as authorizing the State Treasurer to take a mortgage made directly to the Treasurer by the trust company upon real estate owned by it. On the contrary, the mortgages which are within the purview of the statute are those mortgages which can be deposited with the State Treasurer to be held by him as collateral and subject to disposition by him as such collateral in the event it should become necessary for the same to be disposed of in order to satisfy any judgment against the trust company.

I am advised that ever since this statute was enacted this construction was placed upon it by the various Attorneys General who have preceded me in office.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

COMMISSIONER OF AGRICULTURE.

INSPECTORS—APPOINTMENT

March 7, 1928.

Dear Sir:

Replying to your request for my opinion in the matter, I beg to advise that Chapter 10149, as amended by Chapter 11998, Acts of 1927, relating to and providing for the Bureau of Inspection in the Department of the Commissioner of Agriculture, State of Florida, authorizes the Governor to appoint inspectors for the Bureau of Inspection as provided by law as the same may be recommended in writing by the Commissioner of Agriculture.

The inspectors so appointed are to hold office until such time as the Governor may deem it necessary to discontinue their services or until such time as the Commissioner of Agriculture may advise the Governor that such services are not satisfactory. Commissions of the inspectors are to run during the pleasure of the Governor and not exceeding four years. The Governor is authorized to terminate the appointment of any inspector when in his judgment the best interests of the State will be subserved by such termination.

Section 5 of Chapter 11998 provides that the offices of oil, food and drug, and fertilizer inspectors for the chemical division of the Department of Agriculture and citrus fruit inspectors are abolished and the inspectors provided for in such Act shall be in lieu of such former inspectors.

The statutes in question should be construed as having for their object the reorganization and consolidation of all existing inspectors into one inspection bureau to act under the provisions of the new law.

It will be noted in Section 2 of Chapter 11998 that the language of the Act is that the Governor is "authorized to appoint" inspectors who shall serve under the terms of the new Act.

Construing Section 5 of the Act in connection with Section 2 of the Act, it appears that the intention of the law is that upon the organization of the inspection bureau being completed by the appointment of the inspectors provided for by Section 2, all other inspectors of the classifications mentioned in Section 5 of the Act are thereby abolished and done away with, but inasmuch as the law obviously contemplates that there shall be no hiatus in the inspection forces of the State of Florida in reference to the various subjects for which they are provided by law, my opinion is that until such time as the inspectors provided for by Section 2 of Chapter 11998 are appointed by the Governor pursuant to that section and thereby the organization of the inspection bureau completed under Section 5 of the Act abolishing oil, food and drug, fertilizer and citrus fruit inspectors, such inspectors as provided for by existing laws continue in office under their existing commissions until such time as such commissions expire by operation of law.

The supervising inspector provided for by Section 1 of the Act appears to come into existence immediately upon the approval of the Act, which approval was given May 27th, 1927.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

GASOLINE TAX—COLLECTION OF 1/8 CENT ON SALES TO U. S.
GOVERNMENT.

August 4, 1928.

Dear Sir:

Section 9 of Chapter 7905, Acts of 1919, provided in part as follows:

That for the purpose of defraying the expenses incident to the inspection, testing and analyzing oils in this State, there shall be paid to the Commissioner of Agriculture a charge of one-eighth cent per gallon on all oils sold within the State, which payment shall be paid before delivery to agents, dealers or consumers within the State. * * *

In the case of *Panhandle Oil Co. v. State of Mississippi*, upon relation of R. H. Knox, Attorney General, decided May 14th, 1928, the Supreme Court

of the United States said, in holding that the State of Mississippi was not entitled to collect a gasoline tax on any gasoline sold to the Government of the United States:

To use a number of gallons sold the United States as a measure of the privilege tax is in substance and legal effect to tax the sale. *Telegraph Co. v. Texas*, 105 U. S. 460; *Frick v. Pennsylvania*, 268 U. S. 473, 494; and that is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State. The exactions demanded from petitioner infringe its right to have the constitutional independence of the United States in respect to such purposes remain untrammelled. * * *

It will be noted that under the Gasoline Inspection Act of 1919 "the number of gallons sold" is the measure of the tax and according to the holding of the Supreme Court of the United States, this is in legal effect a tax upon the sale itself.

Accordingly, I am of the opinion that under the holding of the case above referred to, the 1/8 of a cent per gallon inspection tax upon gasoline cannot be legally collected upon sales of gasoline made to the Government of the United States.

Very truly yours,

FRED H. DAVIS, Attorney General.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

TEACHERS—EMPLOYMENT—CONTRACT

August 25, 1927.

Dear Sir:

I have before me your request of August 23rd for my opinion as to the rights, powers and privileges of the County Superintendent, County Board of Public Instruction, State Superintendent and the State Board of Education with reference to the employment of teachers and the conditions which may be imposed upon them by contract.

I have also examined the attached form of contract proposed to be insisted upon by the County Superintendent of one of the counties of this State, in which proposed form of contract are certain objectionable provisions such as that the teacher, as a condition of employment, must agree to read at least one professional journal and become an active member of the West Florida Educational Association; must refer cases to the County Superintendent of Public Instruction and abide by his decision; must avoid dancing or attending dances while under contract, etc.

Section 454 of the Revised General Statutes provides that the County Board of Public Instruction is directed to employ teachers for every school in the county and to contract with and pay the same for their services.

Section 464 of the Revised General Statutes provides that the County Superintendent of Public Instruction shall do all in his power to awaken an increased interest in parents, guardians, school supervisors and teachers with regard to the better education of youth in every respect and the general diffusion of knowledge, and in this connection, to decide upon questions and disputes which arise when submitted to him by the parties interested and to refer his decision to the Board of Public Instruction.

Under Section 152 of the Revised General Statutes, the State Superintendent of Public Instruction has the duty and he is empowered to entertain and decide upon appeals and questions arising under the law, or refer such to the Board of Education for decision, and he is also empowered to prescribe rules and regulations for the management of the Department of Public Instruction.

Section 602 of the Revised General Statutes directs and empowers the State Board of Education to decide upon questions and appeals referred to them by the State Superintendent of Public Instruction, or any matters, or differences, or disputes arising under the operation of the law and to prescribe the manner of making appeals and conducting arbitrations.

Pursuant to the powers vested in the State Board of Education said board has adopted certain rules and regulations which are found printed in the pamphlet issued by the State Superintendent of Public Instruction. Among the rules and regulations prescribed by the State Board of Education is a form of teachers' contract to be used in the several counties of the State. It, therefore, appears from the several sections of law above referred to that while the primary duty and discretion of making contracts with teachers and employing teachers is given to the Board of Public Instruction of the county, yet the State Superintendent of Public Instruction and the State Board of Education has general supervisory power over the same under other sections of the law. Teachers are licensed and permitted to perform their duties by State authority, the control thereof being removed from the several counties and county authorities. While County Boards of Public Instruction and County Superintendents have full power to employ teachers and enter into contracts with teachers holding the requisite qualifications of teachers, yet in making such contracts, I am of the opinion that neither the County Superintendent or the County Board of Public Instruction has a right to impose terms and conditions in such contracts which are contrary to the rules and regulations prescribed by the State Superintendent of Public Instruction or approved by the State Board of Education. The State authorities in the exercise of supervisory powers imposed upon them by law, have laid down the form of contract which shall be used by the county boards in employing teachers. In the interest of wisdom and common sense the form of contract prescribed by the State Board of Education omits any reference to whether or not the teacher shall bob her hair, wear silk stockings, shorten her skirts, attend dances, etc., or be compelled to belong to any particular association, or otherwise have her personal thoughts, actions and beliefs interfered with by contractual provisions. Such form of contract, omitting as it does, controversial provisions such as above referred to, was evidently laid down as a medium for promoting harmony in the public schools and in recognition of the fact that the person who desires employment as a school teacher does not thereby surrender her personal privileges as to manner of dress or independence of personal conduct which does not amount to immorality or such as would be evidence of bad character.

I am, therefore, of the opinion that the form of contract laid down by the State Board of Education is one which the State Board of Education had authority to prescribe, with the approval of the State Superintendent of Public Instruction, and that the proposed form of contract submitted to me for consideration, which is materially variant therefrom, and which contains

provisions undertaking to control the personal habits and conduct of teachers outside the school room without any basis therefor being found by any rule or regulation by the State Superintendent of Public Instruction or the State Board of Education to support such provisions, is illegal and contrary to the purpose and intent of the constitutional and statutory provisions of the State of Florida governing the conduct of the schools, and that you and the State Board of Education, if you refer the matter to them, have full authority to require the County Superintendent who insists upon using such contract in his county, to desist therefrom, if the matter is properly presented to you by way of appeal from a dispute between a teacher who refuses to sign such contract and the County Superintendent in question.

To summarize: First. The power to make rules and regulations governing the conduct of teachers is vested in the State Superintendent of Public Instruction, it being the duty of the State Board of Education to co-operate with the superintendent in making and enforcing such rules and regulations.

Second. That a County Superintendent of Public Instruction and a County Board of Public Instruction has no right, by means of particular contract provisions, to prescribe rules and regulations governing the conduct of teachers, which contractual regulations are in conflict with rules and regulations of the State authorities.

Third. That it appears from the rules and regulations adopted by the State Board of Education that they have taken exclusive jurisdiction of the form of contract which the teachers may be required to sign as evidence of their employment, and that such jurisdiction having been exercised, is exclusive of any inconsistent jurisdiction of the County Superintendent or County Board of Public Instruction to alter the same in any material particular.

Fourth. That in any event, in case of dispute by the teacher and the county authorities as to what form of contract shall be signed, the State Superintendent has power to decide the matter himself, if he so desires, or he may refer it to the State Board of Education for decision under the law.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TEACHERS—EXAMINATIONS

Dear Sir:

December 21, 1927.

This will acknowledge the receipt of your letter of this date, as follows:

Please give this office your written opinion as to whether or not teachers' examinations on the Constitution of the United States as required by Senate Bill No. 348, Acts of the Legislature of 1927, can be prepared in the office of the State Superintendent of Public Instruction and conducted by the County Superintendent as required by Section 2 of House Bill No. 80 at times other than the first Thursdays in each of the months of February and June and the third Thursday in September.

Chapter 10256, Acts of 1925, Laws of Florida, requires that all persons applying for certificates authorizing them to become teachers in the public schools of this State shall, in addition to other requirements and before receiving such certificate be required to pass a satisfactory examination upon the provisions and principles of the Constitution of the United States and shall also satisfy the examining power of his or her loyalty thereto.

By Section 4 of the Act it is made the duty of the State Superintendent of Public Instruction to "make due arrangements for" carrying out the provisions of the Act. It is also provided that for such purposes the State Superintendent shall provide suitable texts adopted for the needs of the high schools, universities and college graduates as specified in the Act.

Section 3 of the Act was amended by Chapter 11908, Acts of 1927, so that the requirements hereinbefore mentioned do not apply to graduates of higher institutions of learning approved by the State Board of Education, which graduates have completed a course of six semester hours in American History and Government, including the Constitution of the United States.

It appears that this is a separate Act, which is not in any wise limited by any terms or provisions of the laws of the State relating to the examination and certification of teachers and the administration of this special law is placed entirely in the hands of the State Superintendent of Public Instruction, who is charged with the duty "to make due arrangements for carrying out the provisions of Sections 1 and 3."

Under the power and duty resting upon the State Superintendent of Public Instruction to make "due arrangements" the State Superintendent of Public Instruction may provide for holding special examinations at times and places other than those fixed by law for the regular examinations for school teachers generally and may prepare special examinations in his office and cause them to be given to applicants for examination in the offices of or by County Superintendents of Public Instruction at any time that he may designate or may cause such examination to be given by any other agency which he may devise for that purpose, the matter being committed entirely to the discretion of the State Superintendent of Public Instruction as to the time when and places where and medium through which said special examinations for teachers on the Constitution of the United States shall be carried out.

The power of the State Superintendent in that regard is all summed up in the statutory language that he must make "due arrangements" for executing the Act.

This being true, I am of the opinion that the State Superintendent of Public Instruction may lawfully prepare in his office teachers' examinations upon the Constitution of the United States as required by law and may cause same to be conducted by the County Superintendent of Public Instruction, at times other than the first Thursday in each of the months February and June and the third Thursday in September.

However, nothing herein is to be construed as implying that there is any restriction upon the right of the State Superintendent of Public Instruction to combine the holding of examinations upon the Constitution of the United States with other examinations held for the certification of teachers as provided by the general law of the State, although there is nothing in the statutes which limits these special examinations to either the times or places or modes prescribed for general examinations.

Trusting this answers your letter of December 21st, requesting my opinion on the foregoing, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION, CLERK FOR
April 28, 1928.

Dear Sir:

There is no general statute authorizing a County Superintendent of Schools to employ a clerk.

There may be a special statute in some counties, in which case the special statute will have to be consulted.

The employment of a clerk, therefore, in the office of a County Superintendent of Schools is a matter entirely within the control of the County Board of Public Instruction and it is legal for such board to employ such clerk with the knowledge and consent of the County Superintendent, if the board sees fit to do so.

I presume, however, that most county boards would co-operate with the County Superintendent in such a matter.

Very truly yours,

FRED H. DAVIS, Attorney General.

BOARD PUBLIC INSTRUCTION—MEMBER OF CAN BE TEACHER
May 7, 1928.

Dear Sir:

I have your request of May 5th, asking my opinion on the following question:

If a man is employed to teach a public school and is afterward elected a member of the County School Board of the same county, can he legally continue to teach that school for which he was employed?

I am of the opinion that there is nothing in the laws of the State of Florida which would work the forfeiture or rescission of the contract lawfully entered into with a teacher when of course such teacher is, subsequent to the making of the contract, elected to the County Board of Public Instruction.

I would, therefore, advise that the contract with the teacher should be carried out notwithstanding the fact that the teacher has been elected to the Board of Public Instruction.

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICT—POWERS OF TRUSTEES AND
BOARD PUBLIC INSTRUCTION

May 26, 1928.

Dear Sir:

I beg to answer your inquiry of May 24th, requesting my opinion on certain phases of the school lands, as follows:

May a County Board of Public Instruction of a county advertise for bids for enlarging and improving a special tax school district school house and let a contract for the same, using the proceeds of a special tax school district bond sale for such improvement, without the recommendation, knowledge or consent of the school trustees of said district?

Does a Board of Special Tax District Trustees have authority to erect or repair a school building within its district without authority from the County Board of Public Instruction?

If a County Board of Public Instruction erects a school building

upon a lot, a part of which lot is owned by a private citizen, what remedy has this citizen?

May a County Board of Public Instruction spend special tax district funds without the knowledge or consent of the Board of Trustees of said district?

The County Board of Public Instruction occupies the status of trustee for school purposes for which it is created as to county property and county funds. See *First National Bank vs. Board of Public Instruction for Lafayette County*, 111 So. 521.

The statutory authority of trustees of a special tax school district with reference to schools in the district is of supervision only and does not include the right to lease or otherwise deal with the school property. See *Trustees of Special Tax School District No. 1 of Leon County vs. Lewis*, 63 Fla. 691, 57 So. 514.

Under Section 454, Revised General Statutes, it is the duty of the Board of Public Instruction to obtain possession of, accept and hold under proper title as a corporation all property possessed, acquired or held by the county for educational purposes and to manage and dispose of the same to the best interests of education, provided that special tax school districts may hold school property that it has, or may hereafter acquire, for school purposes by gift, devise or otherwise.

Basing my opinion on the above statement of the law, which is taken from holdings of the Supreme Court, I will state that a County Board of Public Instruction of a county may advertise for bids for enlarging and improving a special tax school district school house and let a contract for the same, using the proceeds of a special tax school district bond sale for such improvement without the recommendation, knowledge or consent of the school trustees of said district, said school trustees having powers of supervision only.

2. I am of the opinion that a Board of Special Tax School District Trustees have no authority to erect or repair a school building within the district without authority from the County Board of Public Instruction.

3. I am of the opinion that a County Board of Public Instruction may lawfully spend special tax school district funds without the knowledge and consent of the board of trustees of the special tax school district; provided, however, that funds in the control of the Board of Public Instruction specifically raised in a special tax school district for a particular purpose must be treated as trust funds for that purpose and may not be diverted to another purpose until the specific purpose for which they were raised has been accomplished, and it is the duty of the trustees of the special tax school district to see that the County Board of Public Instruction so executes such trust. See *Miami Bank & Trust Co. vs. Board of Public Instruction of Broward County*, 76 Fla. 531, 80 So. 307.

In regard to your inquiry as to remedy of a private citizen against a County Board of Public Instruction which has erected a school building upon a lot, a part of which is owned by the private citizen, without such citizen's consent, I would say that such citizen might bring ejectment proceedings against the Board of Public Instruction to cause the removal of the building unless the Board of Public Instruction condemns and pays for the part of the lot upon which the building is erected; or the citizen might file a bill in

equity against the Board of Public Instruction, seeking the payment of compensation for that part of his property which has been unlawfully appropriated by the Board of Public Instruction for public purposes without compensation.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TRUSTEE OF SPECIAL TAX SCHOOL DISTRICT—RIGHT TO CONTRACT WITH COUNTY SCHOOL BOARD

August 13, 1928.

Dear Sir:

I have before me the letter dated August 11th, from Hon. F. N. K. Bailey, Superintendent of Public Instruction, Sebring, Fla., in which he makes inquiry as to whether or not it is legal for a Trustee of a Special Tax School District to be a contractor with the County School Board for transporting pupils to the various school of the county.

Under date of May 4th, 1907, former Attorney General W. H. Ellis, who is now Chief Justice of the Supreme Court, expressed the opinion that it was against public policy for either members of the Board of Public Instruction or Trustees of Special Tax School Districts to be parties to contracts relating to the disposition of school funds in which such trustees would have an interest as contractor adverse to the public interest.

I beg to advise that I am of the opinion that such a contract is against public policy and will be illegal.

Very truly yours,

FRED H. DAVIS, Attorney General.

XII.**SEMI-OFFICIAL OPINIONS****STATE OFFICERS.**

The following are a few of the opinions rendered by this office to the various State attorneys, State boards and commissioners, which may be of interest to the public generally.

STATE ATTORNEYS.**GAME COMMISSIONER—"HONORARY"—POWERS AND DUTIES**

November 15, 1927.

Dear Sir:

I beg to acknowledge the receipt of your inquiry addressed to me by virtue of Section 107, Revised General Statutes, which provides that the Attorney General, if requested by the State Attorneys, shall give them his opinion in questions of law.

Section 3 of Chapter 11838, Acts of 1927, Laws of Florida, provides among other things that the State Game Commissioner shall have authority to employ deputies and other assistants and that the Game Commissioner and his duly authorized deputies shall have the power to enforce the laws relating to game, non-game birds, fresh water fish and fur-bearing animals and to carry fire-arms or other weapons, concealed or otherwise, in the performance of their duties.

It is apparent that if this Section of the law is constitutional, which must be conceded for the purpose of this inquiry, the State Game Commissioner is authorized to appoint and authorized to employ deputy State Game Commissioners and other assistants.

The fact that the Deputy Game Commissioner may be denominated as "honorary" deputy game commissioner would apparently have a bearing only on the right of such "honorary" deputy game commissioner to receive salary as such from the State of Florida. It does not appear to me that to denominate a duly appointed deputy game commissioner as an "honorary" commissioner has the effect of rendering the appointment illegal.

As to the question of carrying fire-arms about their persons, the law is very specific that such permission is only granted to such officers when they are engaged in the performance of their duties, which would mean some active work directed to be done by the State Game Commissioner with reference to the enforcement of the game law.

It certainly would be stretching this Section a long way to hold that the mere fact that a man had a commission as honorary deputy game commissioner could go about the country armed with a deadly weapon, concealed upon his person under the pretext that he is engaged in the performance of his duties as honorary deputy State Game Commissioner.

I am, therefore, of the opinion that while the State Game Commissioner may have power to employ an honorary deputy game commissioner that such honorary deputy State Game Commissioner has no authority to carry fire-arms under Section 3 of Chapter 11838 unless he has been specifically

directed by the State Game Commissioner to perform some official act with reference to the enforcement of the law relating to game, non-game birds, fresh water fish and fur-bearing animals and is actually at the time he is bearing such arms engaged in carrying out such specifically directed duties.

You will notice in Section 2 of the Act that a reference is made to "paid" deputies, which implies that the Act contemplated the appointment of deputies who are not "paid" deputies and who might properly be called "honorary" deputies.

I am unable to see how an honorary deputy game commissioner, so-called, would have authority to carry a concealed weapon on his person or at the county courthouse unless, of course, he was there for purpose of executing some process in some legal proceedings with reference to the enforcement of the game law.

Trusting this answers the inquiry contained in your letter of November 11th, I am

Cordially yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS MAY LEASE CONVICTS TO ANOTHER COUNTY

February 22, 1928.

Dear Sir:

I have your letter of February 14th reading as follows:

Would it be lawful for the County Commissioners of Lake County, Florida, to lease its convicts to Taylor County, Florida, for the purpose of building roads?

Your question is answered by Section 2 of Chapter 9203, Acts of 1923, Laws of Florida, amending Section 6218, Revised General Statutes. I find the following provision in such amended law:

In the event the county commissioners of any county deem it to the best interest of their county, they may hire out their prisoners to any other county in the State to be worked upon the public roads, bridges or other public works of that county or they may upon such terms as may be agreed upon between themselves and the State Road Department lease or let said prisoners to the State Road Department instead of keeping them in the county jail.

Trusting this gives you the information requested, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

FISH NETS, ILLEGAL—REPLEVIN

March 19, 1928.

Dear Sir:

In the case of Mullen vs. Mosely, 90 Pac. 986, 12 L. R. A. new series 394. the rule is laid down that replevin will not lie to recover property which is designed to be used and only capable of being used in violation of the law.

This was a case in which certain gambling devices which were declared by statute to be a nuisance were attempted to be replevied and the court held that replevin did not lie under such circumstances.

The same rule applies likewise to fish nets and other contraband prop-

erty such as stills, designed to make intoxicating liquor, and other contraband property. I merely cite this case as an example for there are many authorities other than this and you will find them referred to in the annotations to this case in L. R. A.

In the case of *Laughton vs. Steele*, 119 N. Y. 226, 7 L. R. A. 134; 152 U. S. 133; 38 L. Ed. 660, the Supreme Court of the United States upheld the right of the Legislature of a State to provide that fish nets of improper size and character and designed for use in the violation of the law should be subject to seizure and summary destruction without the necessity of judicial proceedings.

As this is a case affirmed by the U. S. Supreme Court, I presume there will be little question as to its application in the State of Florida.

Based on these and other authorities it is clear to my mind that the action of replevin will not lie against a sheriff to recover fishing nets of unlawful dimensions which have been seized by such sheriff.

This view is sustained by the opinion of the Supreme Court of the State of Florida in the case of *Tison vs. Bowden*, 8 Fla. 61; 71 Am. Dec. 101, in which latter case the Supreme Court of the State of Florida declared that goods in *custodia legis* could not be covered by replevin. Fish nets which have been seized by the sheriff because they have been used in the violation of the law and are of a dimension and size declared to be unlawful and subject to forfeiture are in *custodia legis*.

If the owner of the nets feels that the sheriff has wronged him by seizing such nets or that the nets themselves are of legal size and character and not subject to forfeiture there are three remedies open to him.

One is to make a motion before the court having jurisdiction of the criminal charge made against the owner of the nets, asking that such nets be returned to the owner. This remedy, of course, is only available where the person has been arrested for violating the law by using such nets and the nets have been seized as an incident to the arrest. The practice in such cases is similar to that which prevails in the Federal courts when motions are made to release liquors which have been seized without proper search warrant.

The second remedy is to sue the officer for trespass and ask for the recovery of the value of the nets, which such officer has unlawfully appropriated, if in fact he has unlawfully appropriated the same.

The third remedy is to file a bill in equity, setting up the fact that the nets are of a peculiar value and character and that no other adequate remedy at law exists and as that the sheriff be enjoined from destroying or disposing of such nets. The showing that there is no other adequate remedy at law might be based on such allegation as that by reason of the special value of the nets to the business of fishing that depreciation of the nets will result in the destruction of the business, for which incidental destruction of the business there is no adequate remedy at law.

Certainly replevin is not the proper remedy and I think the opinion of former Attorney General Rivers Buford is eminently correct on that point.

I am of the opinion further that if replevin proceedings are instituted in the Circuit Court of Santa Rosa county to recover fish nets in *custodia legis* and the Circuit Judge refuses to arrest the progress of the suit and

quashes the writ of replevin upon proper showing of the facts that a writ of prohibition from the Supreme Court will lie to the Circuit Court to prohibit the circuit court from proceeding with the trial of the replevin suit because of a lack of jurisdiction to entertain the same.

It appears to me that a proper presentation of the law to Judge Thomas should cause him to quash writs of replevin directed to the sheriff to seize nets held by him in his official capacity as such sheriff. If there were any remedy at replevin at all it would have to be invoked after the nets passed out of the control of the sheriff into the hands of private parties in the event that the nets should not be destroyed but sold under proper proceedings.

If you desire to apply for a writ of prohibition against the circuit court to prohibit the proceeding with the replevin suit you mention in the event you are unable to convince Judge Thomas of the correctness of Judge Buford's opinion, I shall be glad to render you such assistance as I am able to in the enforcement of the law.

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—POLL TAXES—LAST DAY FOR PAYMENT

April 10, 1928.

Dear Sir:

I have noted what you say in your interesting letter of April 2nd, with reference to the final date for paying poll taxes under Section 314, Revised General Statutes of Florida.

You will, of course, understand that I have no pecuniary interest whatever in the controversy and that my advice in the premises was given as a matter of information and only upon special requests therefor. The county authorities of Manatee county are entirely at liberty to disregard what I think about this situation and apply their own or your interpretation to the law.

In the White case the Court used the language:

* * * that period of time elapsing *between* a given date, and the corresponding date of the next preceding month by name. * * *

The given date must necessarily have reference to the election day because the law provides that the month referred to is the month "preceding the day of such election."

You will notice that the Court, in order to arrive at the time, takes the election day to fix one boundary of time and then takes the corresponding month in the preceding calendar month to fix the other boundary of time and then says that it is the period of time intervening *between* these two calendar dates which constitute the month preceding the day of such election. In other words, if you apply the holding of the Supreme Court literally, which I think must be done unless the opinion is changed, we must take June 5th as the given date mentioned and we must take the corresponding date of the next preceding month by name, which would be May 5th, and then take the period of time elapsing between these dates as being the "month" in question.

You will notice that the given date must be the same as the corresponding date of the next preceding month, by name. If you take June 4th as the given date, as your letter suggests, then the "corresponding date of the next preceding month by name" would be May 4th.

You will notice that the Court says that the month in question is that period of time elapsing *between* a given date "June 4th and the corresponding date of the next preceding month by name," May 4th. You can readily see where this construction will lead you.

I might say that I am largely actuated in my opinion about this matter by the statements made by the Court in the White case that such construction should be adopted as would tend to increase rather than decrease the time in which the elector may pay his poll tax and qualify.

There will be more harm in adopting an erroneous construction which will cut the voter out of one week's privilege of paying poll taxes than adopting an erroneous construction, if mine is erroneous, which will give him a week longer than he is legally entitled to.

The law provides the time limit for paying poll taxes solely for the convenience of the election officers in preparing their books. From May 19th to June 5th is ample time for any diligent supervisor or tax collector to get the books ready for the election.

I might add that your suggestion that the provisions of Section 215 have some connection with Section 314, Revised General Statutes, is not in accordance with the actual facts of the case.

Section 215 was amended in 1921, when I was serving my first term as a member of the Legislature, and the sole purpose of the amendment was to provide for the payment of poll taxes by women. The Legislature, realizing that there had always been a dispute about what was meant by the language of Section 215, to the effect that the poll taxes must be paid on or before the second Saturday in the month preceding the day of such election as used in the old statutes, decided to clarify the law and to allow more time as well by issuing the statement that such taxes must be paid on or before the fourth Saturday before the day of election, therefore they had the same dispute that we are now having over Section 215.

If there is any correspondence between the dates as fixed by Section 215, as amended, and Section 314 as construed, such correspondence is entirely unintentional and wholly accidental. The Legislature saw no reason why these two dates should be the same and I do not think that it ever occurred to anyone during the Session of 1921 to make the two sections correspond because if you will notice they already corresponded before the amendment of Section 215 was made, because each of these statutes said that the poll taxes should be paid on or before the second Saturday of the month preceding the day of the election.

Now, if Section 314 and Section 215 already corresponded before Chapter 8583 was passed, it is not readily obvious as to why they would still correspond when one date was radically changed.

I might conclude this letter by stating, as I said before, that I do not desire any controversy over the question; that I construed the law at the request of a tax collector solely as a matter for his guidance and convenience; that I believe my construction of the law is correct and in accordance with the intention of the law as laid down by the Supreme Court in the White case, which seems to be to allow the maximum time for the voter to qualify, and that if, in the wisdom of the county authorities of your county they desire to adopt a construction which will deprive their people of one week's privilege of paying poll taxes or for that matter of two or three weeks for paying poll

taxes I assure you that I shall not officially question the same as the responsibility for such action will rest entirely upon the shoulders of those who bring it about.

Trusting this covers the situation fully, and with kind personal regards,
I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—LAST DAY FOR PAYMENT OF POLL TAXES

April 19, 1928.

Dear Sir:

Referring again to the matter of time for payment of poll taxes I have run across a copy of opinion rendered on May 15th, 1920, by Former Attorney General Van C. Swearingen, construing Section 314, Revised General Statutes of Florida, in the light of the decision in *State vs. White*, 73 Fla. 426, which opinion was rendered a year or two after the *White* decision came out.

In that year the date of the primary was June 8th and Attorney General Swearingen held that the last date to pay poll taxes was May 22nd. (Page 153 and 309, Biennial Report.)

If you will study the *White* case you will find that the election was called to be held on Tuesday, March 20th, 1917. The Court held that March 3rd was the last day on which poll taxes could be paid. You will notice that here 17 days elapsed between the last day for payment of poll taxes and three Saturdays passed by.

In the present year if poll taxes cease on May 19th there will be 17 days between May 19th and June 5th, and likewise three Saturdays. This coincides exactly with what the Supreme Court did when calculating the time in the *White* case.

This letter is written as a matter of further information and in justification of the position I have taken in the controversy.

With kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ROBBERY—INDICTMENT

May 4, 1928.

Dear Sir:

I have your letter of April 24th, requesting my opinion as to the sufficiency of an indictment for robbery under Section 5055, Revised General Statutes of Florida, where there is no allegation of ownership of property, the subject of larceny laid in the person alleged to be robbed.

I have carefully looked into this question from the standpoint of authorities available in this office and compared the form of indictment you submitted with indictments which have been involved in other cases.

It appears to be the prevailing theory that robbery is only an aggravated form of larceny and a kindred offense and that it is necessary in an indictment for robbery to lay the ownership of the property about which the robbery is alleged to have been committed in some one other than the defendant.

Our statute uses the words "which may be the subject of larceny" and property is not the subject of larceny unless the ownership, either general or special, be in someone other than the defendant.

I notice in all the forms of indictments that are examined that either general or special ownership is laid in such forms by an allegation similar to that usually found in indictments concerning ordinary larceny and I would, therefore, give it as my opinion that in view of the nature of robbery being an offense kindred to larceny that an indictment for robbery under Section 5055, Revised General Statutes, should allege the ownership of the property, the subject of larceny, about which the robbery is alleged to have been perpetrated. There should at least be some allegation to negative the idea that the defendant was seeking by force to recapture his own property from the person alleged to have been robbed.

Trusting this answers your inquiry, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

EMBEZZLEMENT—JURISDICTION

June 15, 1928.

Dear Sir:

Section 5006, Rev. Gen. Stats., provides as follows:

Any crime punishable by death, or imprisonment in the State prison, is a felony, and no other crime shall be so considered. Every offense is a misdemeanor.

Under the statutes defining embezzlement it is provided that the offense of embezzlement shall be punished as if the defendant had been convicted of larceny. A person convicted of larceny of \$22.50 could only be punished by fine or imprisonment in the county jail, or in other words, for a misdemeanor only.

It would seem, therefore, that the embezzlement of \$22.50 is likewise a misdemeanor because it could only be punished by fine and imprisonment in the county jail and not by death or imprisonment in the State prison.

I am, therefore, of the opinion that the jurisdiction to try a charge of embezzlement where the value is alleged to be \$22.50 is in the county court of the county, and not in the circuit court.

Trusting this answers your letter of June 12th, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CIRCUIT JUDGE—ASSIGNMENT IN ABSENCE OF RESIDENT JUDGE

August 4, 1928.

Dear Sir:

Answering your letter of July 31st, I see no way to handle the situation you mentioned unless the Governor could be induced to take cognizance of the absence of Judge Brown from the circuit and assign another judge to that circuit to handle such business as might arise therein.

I think the assigned judge would have all the rights, powers and privileges of the resident judge with relation to calling a special term of court and recalling or re-empanelling the grand jury to handle the matter to which you referred but in the absence of such an assignment by the Governor I see no way in which the matter can be handled.

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE AUDITOR.

SHERIFFS—DUTIES AND COMPENSATION.

February 3, 1928.

Dear Sir:

I have your letter of the 31st ult., in which you request my opinion relative to certain duties to be performed by the sheriffs of the State and their compensation therefor.

Section 3, of Chapter 9169, Acts of 1923, requires that in all cases where sentence of death has been pronounced against any person to be executed by electrocution that such convicted person shall be delivered to the superintendent of the State prison by the sheriff. This requirement seems to be mandatory, and it is evidently the intention of the statute that such delivery shall be by the sheriff of the county either personally or by his deputy. By a liberal construction, it is my opinion that the sheriff may charge 12½c per mile for himself going and returning, and the same mileage for the convict going to the State Prison from the county seat where convicted. There may be instances in which it would be necessary for the sheriff to have guards assist him in conveying such party to the State prison for execution, but under the statute the necessity therefor should be determined by the Comptroller. I do not think, however, that mileage should be allowed for more than the sheriff himself for conveying the party condemned to death to the State Prison.

It is my opinion that the sheriff is not entitled to compensation for a deputy in addition to himself attending the execution of a party at the State Prison.

Where the execution is performed by the sheriff he would be entitled to the \$10.00 provided by law for the execution as allowed before the amendment as to the manner of execution. In my opinion he would be allowed this compensation only in case of actual performance of the execution by him or his lawful deputy.

In case of sickness, or disability of the sheriff to attend the execution, it would hardly be necessary under the law for his deputy to be present at such execution, although the sheriff may attend by or through his deputy in case of such disability.

Yours very truly,

FRED H. DAVIS, Attorney General.

WITNESSES—FEES.

July 30, 1928.

Dear Sir:

Your letter of the 27th inst. received.

It is my opinion that all witnesses summoned for and on behalf of the State in the prosecution of criminal cases in the courts of county judge and justice of the peace are entitled to the statutory fees for mileage and per diem where the case is *nolle prossed* or dismissed by the court, that is, of course, where such witness actually attends court in obedience to a subpoena commanding such attendance. This is in accordance with Section 6021 of the Revised General Statutes.

The only exception to the rule which entitles a witness to his compensa-

tion as such is found in Section 6034, where the witness voluntarily appears before any grand jury, or any prosecuting attorney or a justice of the peace or county judge, and also exception found in Section 6035, Revised General Statutes, providing that any person who voluntarily appears or has himself summoned before a justice of the peace or county judge, upon the trial of any misdemeanor before such justice or county judge and wherein the trial results in an acquittal of the defendant. In all other instances a witness attending on a subpoena as a State witness is entitled to his mileage, going and coming from home, and in addition thereto the legal per diem for each day actually attending court.

Yours very truly,

ASSISTANT ATTORNEY GENERAL.

STATE BOARD OF ACCOUNTANCY.

ACCOUNTANTS, REGISTRATION OF.

November 15, 1927.

Dear Sir:

Section 11 of Senate Bill No. 282, relating to the State Board of Accountancy, requires registration of all persons practicing individually or under an assumed name and all firms engaged in public accounting in the State of Florida, as defined in the Act from the date of the passage of the Act who intend to continue so to practice to register with the State Board of Accountancy before October 1st, 1927.

It is obvious that the purpose of this registration is to give the Board information as to all persons engaged in the accounting business in the State of Florida who became subject to the law when it was enacted.

Having in mind this purpose it is clear that the Board is not prohibited from accepting registration after October 1st, 1927, but that any person subject to Section 11 who fails to register by October 1st, 1927, thereby becomes in default of compliance with the law, which may affect his right to certificate under other sections of the bill.

The failure of a person to register by October 1st under Section 11 might be taken by the Board as being evidence of the fact that the person claiming registration was not an accountant on the date the Act became effective, so as to entitle him, for example, to the benefit of Section 8 of the Act. The Board may, therefore, continue to register accountants under Section 11 even though registration was not made before October 27, 1927.

In regard to Section 8 of the Act, the Board is authorized to issue certificates of authority to practice as a public accountant to the persons coming within the purview of that section. While the Board may lawfully refuse to issue a person a certificate under Section 8 because the person has failed to register under Section 11, yet the Act is not of such a nature as to prohibit the Board from granting a certificate under Section 8 to a person who is not registered under Section 11, if, in the discretion of the Board they find that there was some reasonable or lawful excuse for the failure to register under Section 11.

In short, the requirement of Section 11 was evidently to enable the Board to get a list of all existing practitioners in accountancy so that from

October 1st to January 27th, 1928, the Board could make proper investigations to determine whether or not it should issue a certificate under Section 8 to persons who were in business at the time the Act became effective. For example, a person might register under Section 11 claiming that he was engaged as an accountant in Florida on June 1st, 1927, when the Act took effect and based on that might apply for a certificate under Section 8. On investigation the Board might find that such person was not really engaged in the practice of a public accountant at the date of the passage of the Act so as to entitle such person to a certificate under Section 8, in which event the certificate would be refused.

Trusting this answers your inquiry of November 9th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY ACT—ISSUANCE OF CERTIFICATES

November 28, 1927.

Dear Sir:

I beg to reply to your letter of November 23rd, as follows:

I am of the opinion that the State Board of Accountancy has the legal right to make such regulations governing certificates under Section 16 of Senate Bill No. 282 as it may deem necessary to insure the proper compliance with that section.

Where a certificate is issued for a specific engagement, the board would undoubtedly have the right to require that the engagement for which the certificate was issued shall be definitely set forth in the certificate. Otherwise, the certificate would not be for a specific engagement but would be a general certificate for a limited time.

I do not think that the objection raised about interfering with interstate transactions has any application to the practice of accountancy. Courts have held that it did not apply to the practice of medicine or law and certainly accountancy is not different. I think this objection about constitutional interference with interstate trade by insisting upon compliance of non-resident accountants with Section 16 of the rules of the board is entirely without merit and cannot be sustained.

I have examined the enclosed form of application and I see nothing therein which would be unlawful to require the use of same by persons making application to practice under the new law.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY LAW—ISSUANCE OF TEMPORARY LICENSES

December 13, 1927.

Dear Sir:

Your letter of December 3rd, with reference to a further interpretation of the Accountancy Law came to my office while I was out of the city and, therefore, was not more promptly answered.

It is my interpretation of Section 16 of Senate Bill No. 282 that the purpose of said section was to allow the granting of temporary licenses to outside accountants who might be employed to perform some work in Florida pursuant to an engagement made outside this State.

A municipality may have been doing business for a number of years with an outside accountant and may desire to continue to use the services of such accountant, in which event it would employ such outside accountant to do this work and such outside accountant, if he accepted the engagement, would fall under Section 16.

You will notice that under Section 16 licenses are granted at the discretion of the board and that such licenses may be refused by the board in the exercise of its discretion if they feel that for any reason the applicant is not fairly and honestly within the purpose and intent of Section 16 in making his application. As to this, the board can make a full investigation when each application comes up. You will understand that while the board has discretion under Section 16 to issue or decline to issue the license contemplated thereby such discretion must be fairly and honestly exercised by the board, and where a clear case falling within that section arises, the board should grant a license, but at all events the board has the power, and it is its duty, to protect itself from imposition and whenever it is satisfied from facts before it that persons applying for licenses under Section 16 have in fact not secured their engagements outside the State, such licenses should be refused by the Board in the exercise of its discretion under the law.

Trusting this answers your inquiry of the 3rd inst., I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY LAW—IF CERTAIN INDIVIDUALS ARE DEEMED PUBLIC ACCOUNTANTS

January 5, 1928.

Dear Sir:

I have your letter of January 3rd, in which you ask my opinion as to whether or not individuals whose regular employment is not the practice of public accountancy but who make income tax returns as a side line are public accountants within the meaning of the law governing the registration of such public accountants.

There is nothing in the statutes which would prohibit any person from engaging in the employment of making out income tax returns or engaging in similar employments without securing a certificate of registration as an accountant.

I think your views of the matter are entirely sound and I believe that to attempt to extend the operation of the statute so far as to enable them to make out income tax returns would result in litigation with the Board, which would be very detrimental to the powers and functions which are now exercised.

The statute does not contain any definition of what shall be embraced in the practice of accountancy but inasmuch as this is a profession recognized by the common knowledge of all to consist of certain qualifications and practices such general knowledge would have to be resorted to in order to determine whether any particular act was an attempt to practice accountancy or not.

In this respect the matter is like the practice of law. There are many justices of the peace and notaries public who prepare deeds and legal documents for the public for a consideration and yet at no time have such per-

sons ever been considered as being engaged in the practice of law so as to subject them to penalties for not obtaining a license to practice.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY ACT—COMPLIANCE WITH.

February 20, 1928.

Dear Sir:

I beg to acknowledge receipt of your letter of February 4th, requesting my opinion as to whether or not the State Board of Accountancy under Section 8 of Senate Bill No. 282, Chapter 12290, Acts 1927, has the right to grant certificates of authority upon applications shown to have been mailed to the board prior to midnight on December 31, 1927, and which for one reason or another the board did not receive until after the date specified.

I am of the opinion that the board has lawful authority to receive, accept and file *nunc pro tunc* as of December 31st, 1927, any application which was deposited in the post office on or before midnight of December 31, 1927, in a *bona fide* attempt to comply with the provisions of the act.

Similar laws have been construed by both Federal and State authorities to authorize this to be done in the case of a particular time limit being set and papers shown to have been deposited in the mails within the time limit.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY ACT—RECIPROCITY CERTIFICATES—REVOCATION.

February 28, 1928.

Dear Sir:

I have your letter of February 23rd, asking my opinion as to whether or not the State Board of Accountancy can adopt a rule to the effect that reciprocity certificates issued under Section 2511, Revised General Statutes, shall be automatically cancelled when the person holding the same has been disbarred or suspended by the board of the State from which he obtained his original certificate and based upon which Florida has issued its reciprocity certificate.

I do not think that the board would have the authority to provide for the revocation or suspension of the person holding the certificate granted under Section 2511, Revised General Statutes, merely because the certificate of the person upon which the reciprocity certificate was based had been annulled or suspended by the State of its issuance.

The board has authority to provide that the fact that the certificate of another State has been suspended or revoked shall be *prima facie* evidence of wrongful conduct under the provision of Section 5 of Chapter 12290, Acts of 1927, but it has no authority to provide that the rights of the holder of the certificate under Section 2511 shall be *automatically* and without notice or hearing revoked or suspended merely because the State which originally issued the person in question a certificate has revoked or suspended it.

The obvious purpose of Section 5 of the Act of 1927 is to require that a majority vote of the board shall be necessary to permanently revoke or temporarily suspend a certificate. In no other legal way than by vote of the

board can such certificate be suspended nor does the board have power to revoke or suspend the certificate except for the specific legal causes set out in Section 5.

Also before a certificate can be revoked or suspended the proper proceedings by way of notice, etc., as provided in Section 5 must be taken. The most that the board can provide in line with the plan stated in your letter is to adopt a rule to the effect that where a certificate has been issued under Section 2511, Revised General Statutes, based on the fact that the holder has been duly licensed in another State that when it has been made to appear to the board that such certificate of the holder in such other State has been revoked or suspended that such fact shall be taken and held as *prima facie* evidence that the holder thereof has been guilty of negligence or wrongful conduct in the practice of accountancy.

The board would then take the course outlined in Section 5 of the act to revoke the Florida certificate unless the holder of the Florida certificate showed to the board that the revocation of the certificate of the other State was not due to some professional negligence or misconduct the board would then have the right by a majority vote to revoke the Florida certificate on the basis of the revocation of the certificate of the other state but on the other hand if the Florida certificate holder showed that the revocation or suspension of the certificate was not for anything that would constitute an offense under Section 5 of the Act then the board would be without power to revoke or suspend the Florida certificate.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY ACT—CERTIFICATES FOR REGISTRANTS OF OTHER STATES

April 3, 1928.

Dear Sir:

Answering your request of March 27th for my opinion as to the proper construction of Section 2511, relating to registration of public accountants insofar as the same authorizes the registration of persons holding certificates issued under the law of another state:

I beg to advise that in my opinion the board should provide a special certificate of registration of a different form to cover this class of registrants rather than issue them the same form of certificate issued to those who are examined and licensed by the board itself.

The reason for this is obvious. It may be necessary to determine at any time whether or not the particular registrant has been licensed by virtue of a Florida examination or by virtue of holding a certificate from another State. The only way in which this can be done is by keeping the forms of certificates separate.

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY LAW—VIOLATIONS OF.

April 14, 1928.

Dear Sir:

Referring to your letter of April 6th, I beg to advise that in my opinion

the proper procedure for your Board to take upon learning that the law is being violated with reference to the practice of accountancy is to prepare a detailed statement of the facts as your Board has discovered them by investigation and submit the same, together with a list of the witnesses to the prosecuting attorney of the county where the offense is being committed, with the request that proper proceedings be instituted by such county prosecuting attorney to enforce the law.

There is nothing to prohibit any member of the Board as an individual from swearing out a warrant also if he so desires.

However, the Board as an official body would have no power to conduct a prosecution upon a warrant sworn out by it as a Board.

I am having sent you today under separate cover bound copy of the Report of the Secretary of State, Part 1, 1925-6, which contains a list of county officers on pages 87-181, both inclusive. You will note that the last item of the first paragraph of officers under each county is the prosecuting attorney.

Trusting this information will be of some assistance to you, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY BOARD—AUTHORITY TO WAIVE EXAMINATION OF APPLICANT

Dear Sir:

May 1, 1928.

Section 4 of Chapter 12290, Acts of 1927, provides that the State Board of Accountancy may waive the examination of any person possessing the qualifications mentioned in Section 1 of the Act, whose record and professional standing are satisfactory to the board who shall have practiced public accounting for five years preceding the passage of the Act, of which three years immediately preceding that date shall have been in Florida, etc.

Section 1 of the Act requires that the licensee must be a resident of the State of Florida and a resident is defined as one who has resided in Florida for at least twelve months immediately preceding his application.

My construction of the law is that, construing Section 4 and Section 1 together, any person who has resided in the State of Florida for at least twelve months immediately preceding his application and who has the other qualifications required by Section 1 and Section 4 of the Act may be lawfully licensed under Section 4.

I do not think that the requirement of three (3) years' practice in Florida means that the applicant must have lived in Florida during such three years because Section 4 in fact adopts Section 1 as a part of the requirements of Section 4 and Section 1 only has a one-year residence requirement.

Trusting this answers your request of April 14th for my opinion in the premises, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY—PREREQUISITE TO PRACTICE BY NON-RESIDENTS

Dear Sir:

May 1, 1928.

I have your letter of April 19th, requesting my opinion upon the status of a person who, being an accountant from North Carolina, is either personally

or through a representative soliciting accounting engagements in Florida without having a temporary certificate of authority as provided for in Sections 10 and 16.

My opinion is that as such persons have no authority to practice accountancy in this State unless they procure a certificate to practice from your board. However, no criminal offense is committed by such persons soliciting engagements in the State of Florida, because mere solicitation is not itself made an offense by the Act although the employment, if secured, could not be performed by the person soliciting same unless the certificate required by law is first procured.

Any actual practice of accountancy pursuant to an engagement obtained by such solicitation would, however, be an offense.

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY—STATE BOARD—WHEN CERTAIN EXPENDITURES
ARE LEGAL.

August 6, 1928.

Dear Sir:

A portion of Section 3 of Senate Bill No. 282, reads as follows:

Out of the funds collected under this act as amended shall be paid the actual expenses of the State Board of Accountancy in an amount not exceeding Ten Dollars a day to each member of said board for the time actually expended in the pursuance of such duties imposed by this act.

The funds available to the board are paid by the persons who are under the jurisdiction of the State Board of Accountancy. As long as said funds are spent for the purpose of carrying out the provisions of the law, such expenditures are legal.

If the board considers that it is essential to the better performance of their duties that a representative of such board attend a meeting of the State Board of Examiners in order that the Florida board may obtain suggestions and information which will be of benefit to it in conducting its examinations and carrying out its duties under the law, I am of the opinion that it is a legal expenditure for the board to pay the actual expenses of the representative attending such meeting.

I might add that nearly every department of the State Government in Florida sends representatives to national meetings of this character and that the expenses of such attendance has always been considered a proper expenditure and paid out of the funds of the particular department affected.

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANCY—PREREQUISITE TO PRACTICE

December 29, 1928.

Dear Sir:

What I meant to advise you in reference to the liability of a person who failed to take out a re-registration to practice accountancy in this State was that failure to re-register left the person in the same situation he would have been in if he undertook to practice without any license whatever and,

therefore, a prosecution under the statute for doing business without any license whatever would lie against a man who had failed to do the things necessary to keep a license which he did have in force so that the same would protect him in his practice.

In short, a person who fails to renew his registration is in the same situation as a merchant who failed to take out his license upon the expiration of the license year and continues to do business.

The fact that he did at one time have a license would be no excuse for not taking out a renewal in time.

Trusting that you understand the matter, and wishing you the compliments of the season, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANTS—STATE EFFECT ON CERTIFICATE IF
REMOVED FROM.

December 11, 1928.

Dear Sir:

Answering your letter of December 8th, I beg to advise that I am of the opinion that where a person has established a legal residence in Florida and during such residence has passed an examination in the State of Florida and received his certificate but subsequent thereto has gone to another State to accept employment with a firm of public accountants, such person having once become duly qualified under the law does not forfeit his right to register in the State of Florida as a public accountant under the provisions of Section 9 of the Act.

The obvious purpose of Section 9 was to allow a man who had once properly qualified to keep his qualification in force by the compliance with that section.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF ARCHITECTURE.

ARCHITECTURE ACT—CONSTRUCTION

March 29, 1928.

Dear Sir:

Referring to your letter of March 7th, addressed to Hon. J. B. Johnson, former Attorney General, I beg to advise that my opinion upon the subjects inquired about is as follows:

Use of the term "associate." The following provision of Section 9 would apparently furnish legal justification for the use of the term "associate" by a person practicing in connection with a registered architect:

Nothing contained in this Act shall be construed to prevent any employee of an architect from acting under his instruction, control and supervision, *in any capacity*, whether paid by the architect or the owner * * *.

The term "any capacity" is apparently broad enough to include acting in the capacity of "associate." However, if the so-called associate does work other

than under the "instruction, control and supervision" of a registered architect with whom he is associated, he should be registered under the Act as an architect.

Corporation titles: What has been said under the previous heading will apply to this question. A contractor might properly do business in his own name and advertise someone as being associated with him as registered architect. There is nothing in the law which prohibits this, that I can see.

Architects of the Treasury Department: The State is without authority to interfere with the operation of the Federal Government or its agents. I am, therefore, of the opinion that an architect employed by the Federal Government in connection with the construction of proper Government buildings is not liable for failure to register as an architect insofar as he confines his business to solely acting for the Government. Of course, if he does any private business whatsoever the fact that he is also Government architect would not exempt him from the provisions of the law.

The Government architect is in the same status as an attorney employed by the Federal Government to transact its legal business, who, the courts have said, need not be licensed in the State where they undertake to act for the Government.

Use of titles, "Designer," etc.: This question is apparently answered by the following language in Section 9 of the Act:

Any person who shall be engaged in the planning of the erection, enlargement, or alteration of buildings for others, and to be constructed by other persons than himself, shall be regarded as an architect within the provisions of this Act, and shall be held to comply with same * * *.

The law is clear that a person cannot legally practice architecture as defined by the Act merely by changing his title to that of "designer."

Building under \$5,000.00. Section 12 of the Act prohibits the practice of architecture by any person not licensed pursuant to the Act. It also prohibits the putting out of any sign or card or other device which might indicate to the public that the person is entitled to practice as an architect. There is nothing in Section 9 exempting buildings under \$5,000 from the operation of the law, which would overrule the provision of Section 12 to the effect that no sign or other device shall be implied to indicate that a person is an architect who is not an architect in fact under the Act.

What is meant by the exemption of buildings costing less than \$5,000 is that a person may prepare plans to be executed by others for the erection of a building costing less than \$5,000 without thereby being considered to be an architect within the definition given in Section 9. It would appear that this is the proper field for the so-called "designers" to operate in. They certainly have no right to use the word "architect" in such a way as to indicate that they are entitled to practice architecture.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ACCOUNTANTS—PRACTICING WITHOUT LICENSE

December 13, 1928.

Dear Sir:

My view of the Accountancy Law is that a person is practicing without a license when he fails to do the things either necessary to procure a license in the first place or to keep that license alive and in force in the second place.

It is not necessary that there should be a specific penalty imposed for failure to register or renew registration.

Where a penalty is imposed for practicing without a license and the license has expired, either by its own limitations or by failure of the licensee to do something to keep the license in force, then if such licensee continues to practice thereafter he is practicing without a license as much so as if he never had obtained one in the first instance.

The annual registration required by Section 9 of the law is necessary in order to keep the license alive for the purpose of authorizing the licensee to practice.

The failure to register or to renew registration operates as an automatic suspension of such license during the period of default.

Trusting this answers your letter of the 5th inst., I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF CONTROL.

RADIO BROADCASTING STATION, GAINESVILLE—MANDATORY
DUTY OF BOARD OF CONTROL TO PROVIDE.*Dear Sir:*

October 15, 1927.

My absence from the State prevented an earlier answer to your letter of the 12th instant, asking my opinion as to whether or not I thought that the provisions of House Bill No. 701 (Chapter 12217, Acts 1927), amending Chapter 10241, Acts of 1925, imposed a mandatory duty on the State Board of Control to expend the money provided for in said Act.

Section 2 of House Bill 701 provides that the sum of money thereby appropriated by Section 1:

shall be expended by and under the direction of the Board of Control.

In view of the mandatory language implied in the use of the word "shall" I am of the opinion that it is the mandatory duty of the Board of Control to proceed to carry out the purpose and intent of Chapter 10241, as amended by House Bill 701 whenever the money appropriated by these Acts becomes available to be used by the Board of Control for the purpose of carrying out the Act.

I am not advised as to how much of the sum of money appropriated, if any, is available for use at this time.

Trusting this answers your inquiry, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

RADIO STATION AT GAINESVILLE—APPROPRIATION

Dear Sir:

November 7, 1927.

I wish to acknowledge the receipts of your letter of November 3rd, with

reference to a further interpretation of House Bill No. 701 (Chapter 12217, Acts 1927), amending Chapter 10241, Acts of 1925, Laws of Florida, providing for an appropriation to install a radio broadcasting station at the University of Florida, at Gainesville.

As I construe it, the Act appropriates a specific sum of money for the purpose of designing, constructing, operating and maintaining a radio broadcasting station to be located at the University of Florida and operated under the supervision of the engineering college of the university, located at Gainesville. It then makes it the duty of the Board of Control to expend this sum of money and gives the board the power to enter into a contract or contracts for the design, erection, installation and maintenance of said broadcasting station.

Section 3 of the Act provides that in constructing the station it "shall be of a power not to exceed five kilowatts maximum," and shall be so designed and constructed by the use of pick-up apparatus that the State Capitol of Tallahassee and the Florida State College at Tallahassee and Florida State Marketing Bureau may broadcast over a leased wire.

The meaning of this language, as I construe it, is that the station shall be designed so it might be used for broadcasting matter transmitted to it over leased wire from the points indicated, but it does not appear to be essential that the board shall at this time make any provision for leasing the wires to accomplish this pick-up with the other points named nor to actually provide for the pick-up apparatus. The express purpose of the law is that by the use of suitable pick-up apparatus broadcasting may be done over a leased wire from Tallahassee, Jacksonville, etc.

In administering the Act, the primary purpose to be accomplished is the construction of the radio station in question. In providing for the construction sufficient allowance must be made out of the appropriation for maintaining the same during the next fiscal period, which extends until June 30th, 1929.

I think the Act authorizes the Board of Control to fix the amount of money it will set aside for the construction of the station and fix and set aside a separate amount for the maintenance of the station. The aggregate of these amounts must not exceed the sum of \$100,000. So long as a sum not exceeding the \$100,000 is spent and so long as it is spent for the design, construction, installation and operation and maintenance of the said broadcasting station the expenditure is lawful and proper and it is up to the board to fix, in its discretion, the amount of money which it will spend for design, erection and installation and also the amount which it will spend for operation and maintenance.

Trusting this gives you the information that you requested in your letter of November 3rd, I am, with kind personal regards,

Very truly yours,

FRED H. DAVIS, Attorney General.

RADIO BROADCASTING STATION, GAINESVILLE, FLORIDA—
OPERATION.

Dear Sir:

September 6, 1928.

Pursuant to request of the Board of Control under date of September 6th, for my opinion in the matter, I beg to advise that under the law pro-

viding for the installation and operation of a radio broadcasting station at the University of Florida, the law contemplates that the station shall be operated in Florida not only as a University station but as a station for State-wide purposes.

In operating the station the board has the right to make such rules and regulations governing its use as it sees fit and in my opinion it has the right to provide by such rules and regulations for the reasonable use of the station for commercial advertising and charge a fee therefor.

The Legislature, in passing the law, is presumed to have passed the same in the light of usual customs and practices incident to the operation of radio stations generally, which usual customs and practices were known to the Legislature to involve a limited use of the station for advertising purposes and realization of fees therefrom, which are used to defray the expenses of operation. In this way a station is made to a certain extent to pay its own way.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

APPROPRIATION FOR INSTITUTIONS OF HIGHER LEARNING

August 1, 1928.

Dear Sir:

Section 3 of Chapter 12012, Laws of Florida, Acts of 1927, reads in part as follows:

Section 3. There is hereby appropriated annually all moneys available from the special fund for permanent improvements of the State institutions of higher learning, experiment stations and other institutions under the management of the State Board of Control as provided for in Section 1 of this Act, to be expended by the State Board of Control for buildings and permanent improvements at the institutions under its management, as follows:

Forty-three percent (43%) of said sum to the University of Florida and the experiment stations in the State for buildings and permanent improvements, as follows:

For dormitory equipment.....	\$280,000
For infirmary and equipment.....	75,000
For heating plant.....	75,000
For second unit Chemistry-Pharmacy building.....	130,000
For second unit Horticultural building.....	130,000
For Library	100,000
For second unit Engineering-Laboratory building.....	139,300
For new Law building	150,000
and for such other permanent improvements to said University of Florida and experiment stations in the State as the State Board of Control may direct, and * * *.	

An appropriation is generally defined and understood to be a setting apart of money and an authorization of the expenditure thereof by the Legislature, either generally or for specifically enumerated purposes. See *Lainhart vs. Catts*, 73 Fla. 735.

It appears from the above section that 43 percent of the entire sum of money raised under Chapter 12012, Acts of 1927, is appropriated in general

terms, to be expended by the State Board of Control for buildings and permanent improvements at the institutions under its management, and that thereafter follows a specific enumeration of certain items to be taken care of out of said appropriation.

In addition to the specifically enumerated items, it is provided that moneys out of the 43 percent may not only be expended "for such other permanent improvements to said University of Florida and experiment stations in the State," but also the specifically enumerated items which precede this language.

In other words, I am of the opinion that expenditure of the 43 percent appropriated for the University of Florida may be expended by the Board of Control as "they may direct," either for any of the specifically enumerated buildings and items mentioned in Section 3 of the Act or for any other permanent improvements to the said University of Florida and the experiment stations in the State of Florida to the full extent of the aggregate amount of money appropriated and available for use and expenditure on any of the subjects of the appropriation.

While certain buildings and facilities are specifically mentioned in the Act and certain amounts named in connection therewith, I am of the opinion that the sequence in which the expenditures shall be made is a matter exclusively for the Board of Control to direct and that insofar as the amounts specifically stated are concerned these are merely stated by way of limitation on the aggregate sum which may be spent for any specific item and are not intended to confine the Board of Control to the expenditure of moneys for these items *seriatim* or otherwise than as the Board of Control may exercise its discretion in ascertaining and determining those purposes for which expenditures should be first made.

I think the Board of Control has full power and authority under this statute to appropriate the sum of \$30,000 or so much thereof as may be necessary to the University of Florida to furnish the necessary land and housing facilities which are required to secure for the University of Florida the field artillery unit of the R. O. T. C., which is sought to be established at said university, the matter being entirely within the discretion and control of the State Board of Control, in its execution of the statute in question.

Trusting this answers your request for my opinion in the premises, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

RADIO STATION, GAINESVILLE, CONTROVERSY ARISING IN RE USE
OF COPYRIGHTED MATERIALS.

December 10, 1928.

Dear Sir:

Pursuant to your written request of November 28th, 1928, I beg to submit the following opinion relative to the controversy which has arisen between the American Society of Composers, Authors and Publishers and the Radio Broadcasting Station at the University of Florida, particularly with reference to the demand of the latter that the Radio Broadcasting Station shall pay to it a royalty for the use of copyrighted material in connection with the broadcasting of programs from the University of Florida Radio Station—WRUF at Gainesville, Florida.

The point of law involved in this case is: Assuming that Station WRUF operated by the University of Florida is a State radio broadcasting station, established and maintained with State funds and operating solely for the benefit of the citizens of the State of Florida to advance its interests and that of the University of Florida, a State educational institution, does the fact that the Florida State and University Station proposes to and now sells time for advertising purposes on particular occasions make any difference in its liability for the employment of copyrighted music in its programs under U. S. Comp. Stats., Sec. 9517; U. S. Code Ann. Title 17, Sec. 1.

The statute in question provides as follows:

Any person entitled thereto upon complying with the provisions of this Act, shall have the exclusive right * * * to perform the copyrighted work publicly for profit if it is a musical composition and for the purpose of public performance for profit.

WRUF is a radio station now in operation. Funds available from State appropriations for its operation are insufficient to properly assure the continued operation and growth of the station and it is proposed, on certain occasions, that time for advertising purposes be sold to defray part of the costs of maintenance and improvement. The income from such sales of time is devoted solely to the upkeep and improvement of the station.

In connection with the rendition of programs it is proposed that the use of the station for advertising purposes and for ordinary musical programs be separated and disconnected, that is, that the station be operated at given times solely as a State station, in which event the rendition of the State programs will be preceded by the announcement that WRUF is then operating as a State station and solely for the purposes of entertainment of the public listening in without reward or the hope thereof in a pecuniary sense, while at other times, when time is being sold for advertising purposes, an announcement will be made to that effect, and the program rendered at such time dealt with as a separate advertising program, so announced and so carried out that it will be plainly understood as a separate program, although sent out from the same station. An appropriate introductory announcement to such effect will be made in each case.

It is clear under the statute quoted and under the decisions of the courts that while radio station WRUF is broadcasting without selling time for advertising purposes, that the statute is not violated and the American Society of Composers, Authors and Publishers is without right to demand and receive a royalty for the use of copyrighted music controlled by it, and indeed, I do not understand that it claims a royalty under such circumstances.

Does the fact that the University Station now sells time for advertising, on special occasions, render all performances given over such station "public performances of copyrighted works for profit" within the meaning of the law.

In *Witmark vs. Bamberger*, 291 Fed. 776, the court held that a department store owning and conducting a radio broadcasting station, the cost of which was charged against the expenses of its business, violated the copyright law in broadcasting therefrom copyrighted composition without the permission of the owner of the copyright, the word "publicly for profit" as used in the statute should be construed as prohibiting the use of copyrighted composition for making an indirect profit to the defendant's business. In this

case the court pointed out that the broadcasting station was owned and operated by a department store which was operated for profit, that the cost of operation was included in the expenses of the business of the store and was made a part of the business system, and that the broadcasting was done to stimulate the sale of radio instruments and accessories, from which the store made a profit; and that therefore the broadcasting was done for the purpose of profit, which was within the law.

In *Herbert vs. Shanley*, 242 U. S. 591; 61 L. Ed. 511, the Supreme Court of the United States laid down the rule that where the object of the performance rendered was profit, whether directly received from an admission charge, or indirectly received under some other guise, the performance was a public performance for profit and the copyright law applied. In this decision it is noteworthy to observe that the court specifically pointed out that the defendant in that case was giving performances "which are not eleemosynary."

In *Remick vs. General Electric Co.* 4 Fed. (2nd) 160, the Court held that where a broadcaster procured an unauthorized performance of a copyrighted musical composition to be given, and for his own profit makes the same available to the public served by radio, he would be regarded as an infringer.

In *Remick vs. American Automobile Accessories Co.* 5 Fed. (2nd) 411, it was held that the broadcasting by radio of a copyrighted musical composition by a manufacturing corporation, which maintained and operated the broadcasting station for advertising purposes, was a public performance for profit and an infringement of the copyright. In this case the court said that it suffices to come within the copyright statute if "the purpose of the performance be for profit and not eleemosynary; it is against a commercial, as distinguished from a purely philanthropic public use of another's composition, that the statute is directed." The Court further said that it was immaterial whether the commercial use be such as to secure direct payment for the performance by each listener, or indirect payment as by a hat checking charge, when no admission fee is required, or general commercial advantage, as by advertising one's name in the expectation and hope of making profits through the sale of one's products, whether they be radio or other goods. This case was decided by Circuit Court of Appeals of the Sixth Circuit.

In *Remick vs. General Electric Co.* 16 Fed. (2nd) 829 it was held by a District Court judge that one transmitting unauthorized performance of copyrighted musical composition by radio from a broadcasting station maintained and operated to stimulate sale of radio products was an infringer and liable as such.

In *Witmark vs. Calloway*, 22 Fed. (2nd) 412 it was held by a district judge use of a copyrighted song on a music roll in a theater where admissions were charged, even when used by a musician without the knowledge or consent of the theater owner, was an infringement of the copyright when unauthorized.

Radio Station WRUF was established by the State of Florida and is the property of the State of Florida. Its title is vested in the State of Florida and its operators are State employes paid from the general treasury of the State of Florida. See Chapter 10241, Acts of 1925, and Chapter 12217, Acts of 1927, under authority of which the station was erected.

Musical compositions broadcast from said station clearly fall within the characterization of one of the above cited court decisions as for a "purely philanthropic public use" as distinguished from a commercial use.

While time may be sold by the station, the money realized is used to pay the expenses of operation and for betterments to the station to improve the service which may be rendered by it, and no profit whatever is realized even by the State which owns the station.

This use of the funds does not make the station a station for profit, as was ably pointed out by Professor Harry R. Trusler of the University of Florida who cited the analagous cases of decisions which held that merely charging tuition in a school did not make the school one for profit where the proceeds of the tuition went into the maintenance of the institution. See Trusler's Essentials of School Law, page 426 and cases cited.

The Florida Radio Station has a clear legal right to the use of copyrighted music in its programs so long as it does not render them as a "public performance for profit" within the meaning and intent of the Federal Statute as construed by the courts.

A careful reading of the cases and an examination of the facts surrounding the use of such music in programs rendered by station WRUF convinces me that such station is not violating any of the terms of the copyright law and that the demand of the American Society of Composers, Authors and Publishers is unwarranted and should be rejected, insofar as claims for royalties are concerned.

My opinion is:

(1) That Radio Station WRUF is a State agency, owned and operated by the State of Florida for purely eleemosynary or philanthropic purposes, as those terms have been used by the courts in deciding cases under the copyright law.

(2) That Radio Station WRUF has the legal right to use copyrighted musical compositions in its musical programs rendered in the regular course of its operation as a State and university station where due announcement is made to the effect that the station is being so operated and no part of such program is being rendered as a part of time paid for by advertisers.

(3) That Radio Station WRUF has the right to devote certain periods or hours for advertising purposes, for which time it receives payment from advertisers, and during which "paid for" time no copyrighted compositions are used, without rendering the use of copyrighted compositions at other periods or times such as mentioned in paragraph 2 above, an unlawful use or infringement.

(4) That inasmuch as radio station WRUF is State and university station, owned and operated by the State, and not for profit, directly or indirectly, and inasmuch as the time sold by the station is for the purpose of defraying expenses of operation and betterments to the station to improve the service, and not for profit, that the use of copyright compositions on these "paid time" programs would not be an infringement of the copyright law, as such performance would not amount to a "public performance for profit" of such compositions, however, as it is possible to separate such "paid time" performances for advertising purposes from the ordinary programs rendered by the station in its usual course, I advise that controversy be reduced to a

minimum by eliminating the use of copyrighted compositions during the period of time any "paid time" program is being put on, thereby confining the use of copyrighted music to the other regular programs of the station at other hours.

(5) That insofar as claims for royalties for alleged past infringements are concerned that same be rejected, the State of Florida not being legally capable of being sued for damages, even were complainant's position well taken to the effect that it had committed an infringement.

I beg further to advise that in the event the American Society of Composers, Authors and Publishers desires to press this matter further, that the Attorney General's office will accord to the State all proper legal defense in protection of its rights and the vindication of its legal position above taken.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE BOARD OF HEALTH.

VETERINARIANS NOT REQUIRED TO REGISTER UNDER CHAPTER 12005, ACTS OF 1927, LAWS OF FLORIDA

Dear Sir:

October 28, 1927.

Chapter 12005, Acts of 1927, Laws of Florida, is entitled:

AN ACT to require the registration of all physicians, surgeons, osteopaths, chiropractics, naturopaths, midwives and all others practicing the medical and/or material healing art in the State of Florida; to provide fees for the same and penalties for violation.

There is nothing in either the title or the body of this Act which can be construed as applying to veterinary doctors or surgeons, and I am therefore of the opinion that veterinarians are not required to register under this Act.

Trusting this answers your request for my opinion under date of October 27, 1927, I am, with personal regards,

Yours very truly,

FRED H. DAVIS, Attorney General.

PHYSICIANS REQUIRED TO REGISTER ANNUALLY

Dear Sir:

October 18, 1927.

I am of the opinion that Senate Bill No. 75, Chapter 12005, Laws of 1927, contemplates that doctors, whether practicing or not, shall register annually with the State Board of Health.

The purpose of this registration seems to be mainly to preserve information as to the whereabouts of the physicians licensed to practice rather than a registration of those physicians actually engaged in practice. The statute says that all those licensed to practice who at the time the statute was enacted were lawfully engaged in the practice of medicine should register annually as required in the Act.

If a person applies for a license to practice medicine and engages in some other occupation he would probably be exempt from registration under the Act by notifying the bureau to that effect.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION OF PHYSICIANS—CHANGE OF RESIDENCE

November 14, 1927.

Dear Sir:

Section 1 of Senate Bill No. 75 (Chapter 12005, Acts 1927), approved May 28th, 1927, provides:

That from and after the passage of this Act every license to practice * * * shall before the licensee begins to practice thereunder be recorded in a book for that purpose in the office of the Clerk of the Circuit Court of the county in which he resides or in which such practice is intended to be carried on. * * *

It is apparent from this provision, taken in connection with other provisions of the Act that if a physician has his license recorded in the county in which he resides and intends to practice it is necessary to have said license recorded in another county whenever he moves from one part of the State to another, or changes his abode from one part of the State to another, as the law requires that the license be recorded in the county "in which such practice is intended to be carried on."

Very truly yours,

FRED H. DAVIS, Attorney General.

MIDWIVES—REGISTRATION OF

December 31, 1927.

Dear Sir:

Section 2 of Chapter 12005, Laws of Florida, Acts of 1927, provides:

That every person now lawfully engaged in the practice of * * * midwifery and other medical and/or material system of healing and every other person hereafter duly licensed to practice the same shall, on or before the 1st day of January of each year, apply to the secretary of the State Board of Health for a certificate of registration upon a blank form to be furnished by such secretary and shall pay at such time a fee of one (\$1.00) dollar.

Section 5 of the same Act provides:

The secretary of the State Board of Health shall issue to any duly licensed * * * midwife and others duly licensed by any State board to practice the medical and/or material healing art upon his application therefor, in accordance with the provisions hereof, a certificate of registration under the seal of the board for the year ensuing and ending December 31st.

Construing these two sections together, it is apparent that only "duly licensed" midwives are required to apply for a certificate of registration and since there is no statute in the State of Florida at this time providing for the licensing of midwives or the practice of midwifery it is also apparent that Chapter 12005 at present has no application insofar as requiring the registration of midwives is concerned. The obvious purpose of the statute is to provide for the registration of licenses and where no licenses are provided for no registration can be had.

This is in confirmation of an opinion previously rendered to you verbally.

Cordially yours,

FRED H. DAVIS, Attorney General.

LICENSES—REGISTRATION OF

January 11, 1928.

Dear Sir:

Chapter 12005, Acts of 1927, requires registration of every licensee to practice medicine, osteopathy, chiropractics, naturopathy, midwifery and every other medical and/or material method of the practice of healing art, before the licensee begins to practice.

I am of the opinion that the words "every other medical and/or material method of the practice of the healing art" as used in this Act are words of general import which are limited by the specification of the particular words theretofore used and that the principle of *noscitur a sociis* or *ejus idem generis* applies and limits the general words to the same class of things as are covered by the specific words.

In short, podiatrists would be required to register as their practice is kindred and similar to the practice of medicine but is limited to a specific portion of the human body.

Dentists, on the other hand, can hardly be called practitioners of the same kind of science as ordinary doctors, and, therefore, I think that they are excluded, unless, of course, the practice of dentistry is held to embrace the right to give treatments for human ailments due to correction of dental deficiencies. As I understand the same, some dentists do this and some dentists do not.

It is possible that there might be a distinction between the practice of dentistry and the ordinary practice of medicine. However, if the license of the dentists authorizes, and the practice of his science embraces a certain degree of surgery and therapeutic treatment such as would ordinarily be administered by a physician, a dentist would be as much within the requirement to register as would the podiatrist. As to dentists the question should be determined by a consideration of what the dentist is licensed to do under the rules and regulations of the Dental Board and the laws of Florida.

With kind personal regards, I am,

Sincerely,

FRED H. DAVIS, Attorney General.

THERAPEUTISTS AND MASSEURS, REQUIRED TO REGISTER

January 20, 1928.

Dear Sir:

I am in receipt of your two letters of the 17th inst., asking if masseurs and thereapeutists are required to register under Chapter 12005, Laws of Florida, Acts of 1927.

Section 2 of Chapter 12005 requires all persons engaged in the practice of naturopathy to register with the State Board of Health. Section 1 of Chapter 12286, Acts of 1927, provides for the licensing of naturopaths. The practice of naturopathy is defined as including electro-therapeutics and would also seem to include professional masseurs, which practitioners would fall under the classification of those engaged in the practice of material health science used to aid in the purifying, cleansing and normalizing of the human tissues for the preservation of, and restoration of health.

Construing these two laws together it would appear that persons engaged in the practice of electro-therapeutics as well as professional masseurs are engaged in the practice of naturopathy and are, therefore, required to register as such under Chapter 12005, Acts of 1927.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTRO-THERAPEUTISTS AND PROFESSIONAL MASSEURS,
REGISTRATION

February 3, 1928.

Dear Sir:

Answering your letter of February 2nd, requesting my opinion as to the status for registration of electro-therapeutists and professional masseurs, it seems to me clear from the provisions of Chapter 12286, Acts of 1927, that all electro-therapeutists and professional masseurs should have a certificate as such from the State Board of Naturopathic Examiners before they exercise the right to practice their respective professions as such if these two sciences use mechanical, psychological or material health sciences and to aid in purifying, cleansing and normalizing human tissues for the preservation or restoration of health according to the fundamental principles of anatomy, physiology, and applied psychology as it is apparent that they do.

Of course, if the Naturopathic Board of Examiners has not issued any license to electro-therapeutists and professional masseurs, the provisions of Chapter 12005, Laws of Florida, requiring them to register certificates cannot be applied as the purpose of Chapter 12005 was to secure the registration of all professional certificates relating to the healing art as a means of checking up on those who are practicing without any certificate as required by law.

Trusting this answers your question, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BIRTHS—RECORDATION REQUIRED

June 19, 1928.

Dear Sir:

Answering yours of the 25th ult., I beg to advise that there is nothing in this State more important than the proper reporting and recording of births of individuals as required by the Florida Vital Statistics Law.

This law requires that all births be reported within ten (10) days after their occurrence, and the fact that there is such a law gives the records kept pursuant thereto a very high degree of authenticity in establishing proof of birth in cases involving titles to land and claims before the various departments of the Federal Government.

The Federal Government particularly takes the position that in any state where a vital statistics law has been enacted and is being generally enforced no other proof whatever will be accepted to establish the birth of a person except the record of same as shown by the records of the Bureau of Vital Statistics.

The absence of such a record is conclusive proof that no such birth occurred, as far as the Federal Government is concerned.

Ownership of land is gradually growing farther and farther away from the original source of title and unless proper records of births, marriages and

deaths are kept it will shortly be impossible for any person to arrive within any degree of confidence at the point where such person may be able to establish and maintain his title to land where such title is based upon his heirship through a deceased person.

Very truly yours,

FRED H. DAVIS, Attorney General.

BIRTHS—PROOF OF, WHICH OCCURRED PRIOR TO 1915 ACT

June 19, 1928.

Dear Sir:

Referring to your letter of May 25th, in regard to establishing proof of births which occurred prior to the enactment of the Vital Statistics Law, I beg to advise that I am of the opinion that the only legal way that this can be done under the present law is by following the procedure laid down in Sections 2761-4, both inclusive, Revised General Statutes of Florida, which is the taking of testimony in *rei perpetuam*.

The proceeding referred to is one before the clerk of the circuit court, by which evidence upon any subject can be taken and preserved for use in some future proceeding in the event of the death or removal from the State of the witness whose testimony is required. For example, the testimony of a doctor attending the birth of a person might be taken to establish such fact and to safeguard such testimony being lost by death or removal of the physician.

I think a more simple proceeding should be provided by the next Legislature to allow the subject of births to be established and recorded in your Department with the minimum of time and expense.

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE—REVOCATION OF REGISTRATION NOT WARRANTED.

September 18, 1928.

Dear Sir:

Answering your letter of September 10th, I beg to advise that I find nothing in the law which warrants the revocation of registration simply because the practitioner's license is revoked during the year.

Annotation might be made upon the certificate of registration to the effect that the practitioner's license has been so revoked so that anyone obtaining a copy of the registration certificate might be advised of such fact.

The mere fact that the certificate of registration is not revoked after the practitioner's license is revoked, would not protect the practitioner from the prosecution for carrying on his practice without having a proper certificate.

The purpose of the registration is largely to keep a record of those who claim to have practitioner's certificates for the current year.

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF MEDICAL EXAMINERS.

MEDICAL EXAMINERS—NOT AUTHORIZED TO GRANT LICENSES
WITHOUT EXAMINATION.

October 18, 1927.

Dear Sir:

I have your request as a member of the State Board of Medical Examiners for my opinion as to whether or not Senate Bill No. 77, which became a law of this State on May 28th, 1927, and amended Section 11 of Chapter 8415 of the Acts of 1921, has the effect of abolishing the reciprocity provision contained in Section 11 of said Chapter 8415.

My answer is that the Legislature, by amending Section 11 and omitting to include therein the provisions authorizing the Board of Medical Examiners to grant licenses without examination to licentiates from boards of other states, etc., has, therefore, repealed such provision, under authority of the decision of the Supreme Court in the case of State vs. Duval County, 23 Fla. 483, 30 So. 193.

Under the amended law the board is now without authority to extend reciprocity to other states as provided in the original Section 11, Chapter 8415, Acts of 1921.

Trusting this gives you the information that you desire and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE—APPLICATIONS FOR, TO PRACTICE MEDICINE WHERE
APPLICANT HAS PENDING UNDISPOSED OF APPLICATION
UNDER PRE-EXISTING LAWS.

November 14, 1927.

Dear Sir:

An applicant applied to the State Board of Eclectic Medical Examiners in 1917 for a permanent license to practice medicine as an eclectic physician. In anticipation of being issued a permanent license, he was granted a temporary license under statutory authority until the next regular examination. Before the next regular examination arrived, the Eclectic Board which issued the temporary license became *functus officio* by reason of all its members having been removed from office by the Governor. Accordingly no regular examination of applicant for a permanent license was held, whereupon applicant continued to practice under his temporary license which was lawfully granted to him by the Eclectic Board and which recites on its face that applicant had been examined and found qualified to practice. In the meantime during the latter part of the year 1917 and until early in 1919 applicant joined the U. S. medical service incident to the war, and for two years after being discharged, attended a medical school, being out of the State of Florida during all this time. After having finished the medical course above referred to, applicant returned to the State of Florida and has been practicing ever since for a period of over two years, under authority of the temporary license issued him by the original Eclectic Board in 1917. During the intervening years, the Legislature abolished the Eclectic Board and created a new composite Board which had jurisdiction of matters formerly

handled by the old Eclectic Board. The new composite Board has apparently dealt with applicant as a duly licensed physician for the past two years, although he only had the temporary Eclectic License issued him in 1917. Applicant appears to have been accepted as a regularly licensed physician by his having been admitted to membership in the Florida State Medical Association and other medical societies to which only licensed doctors are eligible for admission. Applicant is now desirous of being accorded some official recognition as a licensed physician by being issued a proper permanent license, based on his original temporary license.

Considering all the above recited facts as true, it appears to me that the unperformed duties of the old Eclectic Examining Board have devolved upon the new composite Board, and that applicant, not being in default, is entitled to now be examined for or be issued a license as an eclectic physician, based on his 1917 application for such, which has never been legally disposed of. In fact, I think it would be proper at this time, in view of the foregoing circumstances, to treat the temporary license as having ripened into a permanent license, and issue credentials to the applicant accordingly.

Trusting this answers your request dated November 5, 1927, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSES—REVOCATION OF—TRIALS—APPEALS FROM.

December 2, 1927.

Dear Sir:

I have your letter of the 26th ult., with reference to the right of the State Board of Medical Examiners to revoke licenses of physicians for causes specified in Section 13 of Chapter 8415, Acts of 1921.

There is nothing in the decision of the Supreme Court in the Plumbing Board case which in anywise affects the powers of the State Board of Medical Examiners, in my opinion.

Under Section 13 of the State Medical Act the board has the right to prefer charges against a physician for the causes mentioned in the law, place him on trial for the violation of such charges and, if he is found guilty by a two-thirds majority vote of the board, the board has the right to revoke the physician's license.

In having trials under this law the board should have all the testimony in the case reduced to writing by a stenographer and filed with the board; also the charges against the physician should be made in writing and sworn to before the board proceeds to trial and the law requiring service of notice should be strictly complied with.

Insofar as proceedings in the Circuit Court and such matters are concerned, such proceedings are those which may be taken by the man whose license is revoked as a means of securing a review by the court of the correctness of the decision of the board. It is up to the disbarred physician to take the case to the Circuit Court if he wants to protest against the decision made by the Medical Board.

The Circuit Court has no power to revoke physicians' licenses, even upon complaint made by the board. All the Circuit Court can do is to pass upon acts of the board and I would suggest that in conducting proceedings of this

kind the board secures the services of its attorney to advise as to the legal sufficiency thereof during the course of the hearing.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF OPTOMETRY EXAMINERS.

OPTOMETRY LAW—OPTICIANS WITH ESTABLISHED BUSINESS NOT AFFECTED

June 21, 1927.

Dear Sir:

I wish to acknowledge receipt of your letter of June 17th with reference to the Optometry Law recently passed by the Legislature.

My opinion is that the following language in the recent Act—

Nothing in this Act shall be construed to prevent the sale or replacement of glasses by any person who has a regularly established place of business, and who has been engaged in such business in the State of Florida for a period of ten years,

has the effect of absolutely exempting any person described in this proviso from the operation of said recent Act of the Legislature. In short, persons who had regularly established places of business in Florida on the date this law became effective, and who had been engaged in the business of selling or replacing glasses, which would include lenses, in the State of Florida for a period of ten years, would not have to comply with any part of the amended law, and not subject to its provision. Outside of this being the plain meaning of the language used, I personally know that the purpose of this amendment was to accomplish this object.

Trusting that this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

OPTOMETRY LAW—BOARD NOT AUTHORIZED TO EMPLOY COUNSEL IN CERTAIN CASES

November 15, 1927.

Dear Sir:

Replying to your letter of November 5th, I beg to advise that I am of the opinion that there is nothing in Section 9 of the Optometry Law (Section 2200, Revised General Statutes) which authorizes your board to employ an attorney to prosecute persons suspected of violations of this statute.

I concur in the interpretation placed on this Act by the former Attorney General to the effect that the board has a right to engage counsel in any case where the board is called upon to defend an action brought against it, but in case of prosecuting violators the State attorney, county solicitor or other prosecuting attorney in the district in which the violation occurs should act as prosecutor.

In preparing the booklet showing the present status of the Optometry Law my suggestion is that booklet be made up according to the Optometry Law as it appears in the Revised General Statutes, Sections 2192 to 2201, both inclusive, with the substitution of such sections as have been amended by the Act

of 1927 for the original sections as they appear in the Revised General Statutes. This will show the law as it reads today.

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF OSTEOPATHIC EXAMINERS.

REGISTRATION OF OSTEOPATHS.

February 17, 1928.

Dear Sir:

I have your letter of February 8th, requesting my opinion as to the proper interpretation of Sections 17 and 18 of Senate Bill No. 366, passed by the last Legislature, relating to the State Board of Osteopathic Medical Examiners.

My construction of Section 17 is that this section requires that all licenses granted by the new board be recorded in the office of the clerk of the Circuit Court as a means of preserving a record of the issuance of the license and the terms and conditions thereof.

This is a separate and additional requirement to the registration required by Section 18 of the Act. My construction of Section 18 of the Act is that every person lawfully engaged in the practice of osteopathic medicine shall register annually with the Secretary of the State Board of Health, regardless of whether he is residing in Florida or in some other state.

You will notice that the language of the statute not only applies to persons lawfully engaged in the practice but also to all persons licensed to practice osteopathic medicine.

The purpose of such annual registration was evidently to preserve a current, authentic record of the residence and place of practice of the registrants and that is evidently the reason why the Legislature made the law not only to apply to persons engaged in the practice but also to persons who are licensed to practice, whether engaged in active practice in the State or not.

I think that the interpretation of Section 18 as being a substantial repetition of the provisions of Senate Bill No. 75, relating to registration is entirely in accordance with the legal effect and operation of the two laws.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

LICENSES—PREREQUISITE FOR RECORDATION

February 20, 1928.

Dear Sir:

Replying to your letter of February 15th, I beg to advise that I failed to find anything in Section 17 of Senate Bill No. 366 or in Senate Bill 75, relating to recording of licenses of physicians which authorizes the requirement that the holder of the licenses be personally present before the Clerk of the Circuit Court in order to get his license recorded.

The main result to be accomplished is the recording of the licenses and I see no authority to require that the person to whom a license has been issued and who desires to record the same to personally appear before the

Clerk of the Court and swear that he is the person to whom the license has been issued.

Practitioners from outside of the State of Florida who desire to have their licenses recorded appear to me to be entitled to send their licenses in for recordation with proper proof of identity without the necessity of personally appearing before the clerk for such purpose.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

**LICENSE—NON-RESIDENT PHYSICIAN MUST RECORD IN OFFICE
CLERK CIRCUIT COURT OF SOME COUNTY**

March 22, 1928.

Dear Sir:

Referring to your letter of March 17th, I beg to advise that it seems to me that your question is fully answered by Instruction No. 4 on the back of the blank which you enclosed from the Florida State Board of Health (Form V. S. No. 55), Bureau of Vital Statistics, relating to certificate of registration.

You will notice that these instructions state that the application must show that a license has been recorded in the office of the Clerk of the Circuit Court of the county in which the applicant resides or in which he "intends to practice."

Section 17 of the Act, relating to osteopathic physicians, says that the license must be recorded in the county where the applicant "may reside or sojourn."

If you will notice the definition of the word "sojourn" as used in the dictionary it means a temporary residence. Therefore, in those cases in which the osteopathic physician is not an actually permanent resident of Florida he will record his license in the county where he intends to "sojourn" in the event that he comes to Florida to practice.

I can see no authority for exempting non-resident physicians from recording their license with the Clerk of the Circuit Court of some county in this State and as I have said, if one of these physicians makes periodical visits to Florida such periodical visits would be within the meaning of the term "sojourn" as used in Section 17, which requires that certificate be recorded in the county where such physician "sojourns."

Trusting this answers your inquiry, I am

Cordially yours,

FRED H. DAVIS, Attorney General.

OPTOMETRY—PRACTICE BY OSTEOPATHS.

December 14, 1928.

Dear Sir:

The question of whether or not an osteopath would have the right to practice optometry under the present law would depend upon what subjects are embraced in the practice of osteopathy, as that term is generally understood in the profession.

Unless it could be shown that osteopaths, as a part of the osteopathic profession, have undertaken to practice as a part of their treatment arts of healing which have to deal with the same subjects as would be dealt with

under the head of optometry, such osteopaths would have no right to practice optometry.

In many of these medical board matters there is an overlapping in some instances of one profession on the other. The question must be determined by a consideration of whether or not the commonly accepted osteopathic practice pursued by the Osteopathic Schools of Medicine embraces within its purview the treatment and rectification of diseases of the eye or defects in the eyesight. If it does, such osteopaths would not be debarred from practicing their own profession merely because a law had been passed specially governing the practice of optometry.

Trusting this answers your inquiry, dated December 7th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE BOARD OF PUBLIC WELFARE.

MOTHERS' AID ACT—DUTY OF COUNTY COMMISSIONERS.

December 1, 1928.

Dear Sir:

I have your letter of November 19th, in which you asked my opinion as to whether or not under the operation of the Mothers' Aid Law, Chapter 12000, Acts of 1927, the Boards of County Commissioners may refuse to make awards of money on behalf of persons who fall within the class of persons entitled to receive the benefits of the Act.

In my opinion, it is the duty of the County Commissioners to exclude the purpose and intent of Chapter 7020, Acts of 1919, as amended by Chapter 12000, Acts 1927, insofar as it may be in their power to do so but at the same time it must be recognized that the County Commissioners have the responsibility and are charged with the duty of looking after the financial interests of the counties which they represent; and that whenever they find that owing to the financial condition of the county it is impossible for them to carry out the law in full, I am of the opinion that they are authorized in that event to execute the law insofar as they are able and to so govern the execution of that part which they are able to carry out as to confer the benefits of the Act upon the more deserving cases to the exclusion of those who may be technically entitled but who may not have as great a claim as some other persons.

I find nothing in the statute which prohibits a Board of County Commissioners from making awards on behalf of children of six years of age or of children from six to sixteen years during the summer months when the public schools are not in session and it is my opinion that all children under sixteen years of age who are otherwise qualified under the provisions of Sections 1, 3 and 4 are eligible to receive aid, although, as I have stated, the County Commissioners must necessarily be governed by the financial conditions of their counties in making their awards, even though a person might be eligible to receive such aid.

The eligibility of the child to receive an award is one question, while the duty of the County Commissioners to make the award rests upon an entirely different consideration and there must necessarily be a wide range

of discretion in the County Commissioners in administering a law of this nature.

Trusting this answers your letter of November 19th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE CHEMIST.

DRUGS AND MEDICINE—TRANSPORTATION BY MAIL

February 3, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of January 28th, enclosing letter from C. C. Clemons, P. O. Box 661, Whitehall, New York, inquiring as to whether or not there are any regulations in the State of Florida which must be complied with relative to the transportation of drugs and medicines by mail direct to consumers in Florida from points outside the State.

The matter referred to is one which can be more accurately handled by the Federal Post Office Department and other Federal authorities than by the State authorities even if the State law were applicable to the question, and I suggest that the persons engaged in the transportation of drugs and medicine by mail direct to consumers in this State from points without the State comply with such Federal laws, rules and regulations as may be applicable. This course is better than to have the State authorities attempt to assert jurisdiction with reference to this matter.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

PROHIBITION LAWS—VIC'S HEALTH TONIC

August 30, 1928.

Dear Sir:

I have your letter of August 28th, referring to letter received by you from Vic's Tonic Company, San Francisco, Cal., dated August 21st, in which they ask whether or not the sale of Vic's Health Tonic which contains 22 percent alcohol is legal under the laws of Florida.

My only reply can be that if this is a *bona fide* patent medicine and not a beverage the same will not be against the laws of the State of Florida.

However, the dispensing of a nominally patent medicine containing over one-half of 1 percent alcohol for the purpose of having same used for beverage purposes is as much against the prohibition law as if it were sold locally as a beverage in the first instance.

I notice reference is made to the fact that the U. S. Prohibition Department has declared that this tonic does not violate the Federal Prohibition law. If this is a fact, I am sure that the Florida authorities will be perfectly satisfied with the ruling of the Federal Prohibition Department on the subject.

I return herewith correspondence submitted.

Very truly yours,

FRED H. DAVIS, Attorney General.

STATE GAME COMMISSIONER.

FISH AND GAME LAWS—OPERATION.

July 2, 1927.

Dear Sir:

I have your letter of June 27th in which you submit to me a list of various local bills on the subject of game and fresh water fish which were passed by the 1927 Legislature, as well as a copy of Senate Bill No. 70, which is a bill of a general nature, and contains among its provisions Section 75, which reads as follows:

All other general or special laws or parts of general or special laws relating to game, fresh water fish, birds or fur bearing animals, whether in conflict herewith or not, are hereby repealed.

together with your inquiry as to whether you should enforce the general law contained in said Senate Bill No. 70, or recognize the local or special laws enumerated in your letter.

My opinion is that you should carry out the provisions of the general law, and I base my conclusion in that regard upon the following facts:

The Constitution of this State requires that all local laws be advertised for 60 days prior to their introduction. It must, therefore, be assumed that all of the local laws enumerated in your letter were thus advertised, or otherwise they would not be valid.

The Supreme Court has held that in determining whether or not a local bill repeals a general bill, or vice versa; that a general act does not repeal by implication a special act, and that a special act does not repeal by implication a general act covering a portion of the same subject when the intent to repeal does not clearly appear, especially when the two are passed at the same session of the Legislature. However, in Section 75 of the General Fresh Water Fish and Game Act of 1927 the intent is clearly expressed that *all* local laws on that subject should be repealed, and even though it may appear that certain local laws on the subject of fresh water fish and game were passed subsequent to Senate Bill No. 70, I am of the opinion that such local bills should be construed with reference to the constitutional requirement of 60 days advertising prior to the introduction thereof, and so construing these various local bills I have reached the conclusion that they could not be construed as being intended to repeal a general law which, at the time of the beginning of such advertisements, had never been passed and of which the proponents of such local bills could have had no knowledge at the time they applied for the passage of such local measure, or measures.

I believe that the apparent contradiction involved in the passage of the General Game Bill of 1927, and the subsequent passage of a number of local bills in conflict with the General Game Bill can be reconciled upon the theory that the Legislature passed these local bills in anticipation of a possible failure of the General Bill to become a law, either by failure of passage in the Legislature itself, or by the veto of the Governor after its passage, and that the Legislature by its action in passing these bills all at the same time, or at the same session, must be deemed to have intended that upon the approval and becoming a law of the General Act (which General Act contained in the language set forth in Section 75) that all other general or special laws

or parts of laws relating to game and fresh water fish would thereby become repealed and ineffective.

It is possible that it will take a decision of the Supreme Court to get this matter definitely settled, and in the hopes that a case involving this question may be instituted and determined at an early date, I would advise that you enforce the General Fresh Water Fish and Game Law of 1927 to the exclusion of all the other general or local laws, and in that event if some resident of a county having one of these local laws should feel aggrieved at your action under the General Law, in that case perhaps he will bring a suit to have the matter tested before the Supreme Court, and thereby determine whether or not this opinion of the Attorney General is well founded.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

WILD LIFE CONSERVATION COMMISSION—ELIGIBILITY OF
LEGISLATORS.

Dear Sir:

July 11, 1927.

I acknowledge receipt of your letter of July 8th, asking me to render you an opinion on the following question:

Are members of the House of Representatives and Senate of the 1927 Legislature eligible for the appointment to membership on the Wild Life Conservation Commission, which is provided for in Section 4 of Chapter 11838, Acts of 1927?

From an examination of Section 4 of the Act referred to, I find that it provides for the appointment of a commission by the Governor and that such commission has a fixed term of office. It appears from said Section 4 that the Wild Life Conservation Commission provided for are to be persons in the service of the Government and that they derive such positions from a duly authorized appointment by the Governor, that their duties are continuous in their nature and defined by rules prescribed by statute and not by contract, and consist of the exercise of important public powers, trusts and duties as a part of the regular administration of the game law under authority of the State Government, and that the powers and duties of this commission remain though the incumbent may die or be changed. It further appears from said Act that these commissioners are to exercise a portion of the sovereign power of the State, inasmuch as their consent are required before certain acts of the Game and Fresh Water Fish Commissioner are valid. Such being the nature of the powers and duties of the Wild Life Conservation Commission, under Chapter 11838, Acts of 1927, I am of the opinion that these commissioners are State officers under the definition of that term as laid down in the case of *State ex rel. Van C. Swearingen, Attorney General, vs. John B. Jones, et al.*, reported in 79 Fla., page 56, and that, therefore, a member of the House of Representatives, or the Senate of 1927, is not eligible for appointment as a member of said commission during the time for which said members of the House of Representatives, or State Senators were elected.

See Section 5 of Article 3 of the Constitution of the State of Florida, which provides that no Senator or member of the House of Representatives shall, during the time for which he was elected, be appointed or elected to any civil office under the Constitution of this State that has been created

or the emoluments whereof shall have been increased during such time. For a construction of this provision of the Constitution, see Advisory Opinion to the Governor, 49 Florida, 269, 39 Southern Rep. 63.

Yours very truly,

FRED H. DAVIS, Attorney General.

FISH PONDS—DEFINITION

Dear Sir:

November 2, 1927.

I have your request for my interpretation of Section 24, Chapter 11838, Acts of 1927, which section provides:

All fish in the rivers, creeks, canals, lakes and other fresh waters within the jurisdiction of the State of Florida are hereby declared to be and shall continue to be the property of the State of Florida, excluding all privately owned enclosed fish ponds, and subject to the restriction and regulations imposed by this Act or otherwise.

A privately owned enclosed fish pond within the meaning of this section must be understood to mean those small bodies of water not connected with other bodies of water, lakes, rivers or streams by currents of water which flow into them on the surface of the ground and which are entirely enclosed and the title to the bottoms of which are in the owners rather than in the State of Florida.

There is a distinction between a lake and a pond, a pond usually being understood to mean a small body of water entirely surrounded by land, whereas a lake is a large body of water entirely surrounded by land and usually connected by means of a brook, river, creek or otherwise with some other stream or body of water.

Any fresh water lake of this State, whether enclosed or not, cannot be construed as a privately owned enclosed fish pond within the meaning of the above section of the law, and only those small accumulations of water which are not connected with other bodies of water or streams or rivers in such manner that fish may pass from one to the other may properly be considered fish ponds. The purpose of the law is to protect the fish which are *ferae naturae* and, therefore, the property of the entire people of the State. If bodies of water are so connected that fish may pass from one body to another the fish in the waters are, therefore, migratory and cannot be said to belong to any particular person, but where there is a small accumulation of water caused by a depression of the earth, which has no outlet or inlet, the fishing in such a body of water may properly be said to be in the possession of the man who happens to own such a pond and, therefore, the law in question expressly excludes such ponds as these from the operation of the Game Law.

Trusting this answers your letter of October 29th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

GAME LAW—CONFISCATION OF GUNS, TRAPS, ETC., AFTER CONVICTION FOR VIOLATION

Dear Sir:

December 13, 1927.

Section 69 of Chapter 11838, Acts of 1927, provides for the confiscation of guns, fishing tackle, traps, or other devices except as provided by Section 26

used in or accessory to the violation of the provisions of the Game Act during the closed season, upon conviction of the user thereof, and provides that after such articles are forfeited to the State of Florida they shall be sent to the State Game Commissioner immediately after such confiscation.

In my opinion, the forfeiture mentioned by this section should be adjudged by the Court before whom the conviction of the offender is had and unless such forfeiture is duly adjudicated and ordered by the Court it is not effective, as the infliction of a forfeiture without judicial proceedings would be a deprivation of property without the process of law.

In giving effect to a forfeiture under Section 69, the Court should add to its sentence an entry something like this:

And it is further ordered and adjudged by the Court that (stating device) used in the violation aforesaid by the above named defendant be and the same is hereby forfeited to the State of Florida and shall be sent to the State Game Commissioner immediately, to be by him disposed of as provided by law.

Under Section 74 of said Chapter 11838 like proceedings should be had for the forfeiture of a license or permit which may have been issued under the provisions of the Game Act. However, under Section 74 there does not seem to be any discretion in the Court to refuse to forfeit a license when the offender has been convicted.

Trusting this answers your inquiry of December 9th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

FISH AND GAME LAW—DEALERS OR BUYERS OF GREEN AND DRIED FURS—LICENSES.

December 14, 1927.

Dear Sir:

Section 64 of Chapter 11838, Laws of Florida, Acts of 1927, provides:

It shall be unlawful for any person to engage in the business of a dealer or buyer in green or dried furs taken from fur-bearing animals of the State of Florida, until such person has been licensed as herein provided. A resident dealer or buyer shall be required to pay a license fee of Ten Dollars (\$10.00) per annum. A non-resident dealer or buyer shall be required to pay a license fee of One Hundred Dollars (\$100.00) per annum. Application for such license shall be made to the State Game Commissioner on blanks furnished by him. All dealers and buyers shall forward to State Game Commissioner each two weeks during open season a report showing number of hides bought and name of trapper from whom bought and his license number. No common carrier shall knowingly ship or transport or receive for transportation any hides or furs unless such shipments have marked thereon name of shipper and the number of his fur animal license, or fur dealer's license.

You will notice that the tax imposed is upon each "person" who engages in the business of a dealer or buyer of dried or green furs in this State and it is, therefore, necessary for each member of a firm which may so engage in business to have the license required by this section just as each member of

a firm of attorneys or doctors has to take out a license, there being no license provided for issuance to firms.

In the case of a corporation, the corporation insofar as its principal place of business is concerned, would be considered to be a person within the meaning of this section and would have to have a license in its corporate name for its principal place of business. If it had agents going around the State, engaging in the business of buying green or dried furs, each of these agents would be engaged in the business of a dealer buying and dealing in green and dried furs and consequently, each such agent should have such a license.

Insofar as individual firms buying furs in Florida by correspondence sent from outside the State or pursuant to orders sent from outside the State such persons, firms and corporations thus engaged in the transaction of interstate commerce would be exempt from the provisions of any license law in Florida, but if a non-resident person, firm or corporation sends an agent into this State to take part in completing a transaction such as by inspecting the furs, making payments, etc., then such agent is subject to the tax imposed by Section 64, which may be taken out either in the agent's name or in the name of the company on behalf of its agent.

Where a resident of Florida is employed by a non-resident purchaser to buy furs in Florida, the license issued to the Florida resident in the Florida resident's name is all that is required but if a non-resident wishes to procure a license in his, her or its name such non-resident would have to take out a non-resident license under the Act.

Trusting this answers your inquiry of December 8th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

FISH AND GAME—BREEDING GROUNDS.

April 17, 1928.

Dear Sir:

I am of the opinion that the following provision of Section 8 of Chapter 11838, Acts of 1927, which provides:

Any person found in or on any State Game Refuge, or breeding ground for game, fresh water fish, non-game birds or fur-bearing animals, with gun, fishing tackle, traps, nets or other devices for taking game, non-game birds, fresh water fish or fur-bearing animals shall be guilty of violation of this act.

is applicable only to game refuges established under Section 8 of the Act and has no bearing or application to game refuges and game breeding grounds established under Section 5 of said Chapter 11838.

Trusting this answers your inquiry of April 12th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

FRESH WATER FISH AND GAME ACT—INTERPRETATION OF SECTION 64.

March 6, 1928.

Dear Sir:

I have your request for my opinion as to the proper interpretation of the following language found in Section 64 of the 1927 Fresh Water Fish and Game Act, to-wit:

* * * No common carrier shall knowingly ship or transport or receive for transportation any hides or furs unless such shipments have marked thereon name of shipper and the number of his fur animal license, or fur dealer's license.

The obvious purpose of this provision of the law was to enable the State authorities to trace the origin of all hides and furs shipped out of the State to other points in order to check up whether or not unlicensed persons were dealing in or shipping hides.

There is no requirement in the law that a man have a fur-bearing animal dealer's license in order to ship hides and furs legally taken by him under a license issued to him under Section 21 of the Act. Consequently, Section 64 should be construed as requiring the transportation company to see that the number of a fur-bearing animal license or a fur dealer's license is on each shipment. The law certainly does not require that both kinds of license be shown.

I am returning herewith letter from the superintendent of the American Railway Express Company to the local agent, Mrs. J. R. Hunter, Tallahassee, dated March 1st.

Very truly yours,

FRED H. DAVIS, Attorney General.

FUR-BEARING ANIMALS—TRAPPING

July 13, 1928.

Dear Sir:

The provision of Section 58, Chapter 1188, Acts of 1927, reads as follows:

Fur-bearing animals may be taken during open season by means of steel traps or other traps, by gun, dogs, or other devices. No person shall poison or cause poison to be placed for killing any fur-bearing animals except within the cartilage around the bone.

I do not construe this provision of the statute as making it unlawful to use a trap which is so arranged that poison placed therein will kill an entrapped animal after it is captured. When an animal is trapped it becomes the property of the person to whom the trap belongs and ceases from that moment to be a part of the wild life of the State which falls under the classification of *Ferae naturae*. It is not therefore against the statute to use traps which either kill the animals outright by mechanical means or provides for killing them by poison or otherwise, if they are trapped, provided the trap is so arranged that the poison cannot be acquired by animals except after they are entrapped.

Trusting this answers your request of July 12 for my opinion in the premises and returning documents in connection therewith, I am,

Yours truly,

FRED H. DAVIS, Attorney General.

FEDERAL REGULATIONS REGARDING SHOOTING DOVES IN SEPTEMBER.

August 17, 1928.

Dear Sir:

I have your letter of August 17th, in which you advise me that the Federal Government has recently amended its regulations upon the open season

for shooting doves in several of the Southern States and asking, if, under these regulations it will be legal, insofar as the Federal law is concerned, to shoot doves in Florida in September.

Section 46 of Chapter 11838, Acts of 1927, prohibits the shooting of such doves except during the open season, which is from November 30th to January 31st, with the provision for a special season in Monroe, Dade and Broward counties to be prescribed by the State Game Commissioner.

I note your request for my opinion as to whether or not the amendment of the Federal regulations referred to has the effect of suspending the provisions of our State law by making it legal to hunt doves in Florida during the month of September, although the same is prohibited by a State statute.

In reply thereto, I beg to advise that in my opinion the amendment of the Federal regulations referred to does not have the effect of suspending or annulling the prohibition contained in the State law. Both the Federal and State governments are supreme in their respective spheres and neither one has the right to, nor does it attempt to, license citizens to violate the laws of the other jurisdiction.

The only effect of the amendment to the regulations referred to is to remove—as far as the Federal Government is concerned—any criminality which would attach to the shooting of doves in September. Although it would be still against the State law to shoot doves except during the open season and while the amendment to the Federal regulations above referred to would not make the offender any longer liable to Federal prosecution and punishment for the same offense, nevertheless the offender would be subject to prosecution and punishment under the State law, which is in no wise amended or modified by the action of the Federal Government.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE HOTEL COMMISSIONER.

LICENSE TAXES—"HOTEL" AND "ROOMING HOUSE" DEFINED

October 28, 1927.

Dear Sir:

Section 2124 of the Revised General Statutes lays down a very full and comprehensive definition of a "hotel" and of a "rooming house" as these terms are used in Article 2, Div. I, Title 11, of the Revised General Statutes of Florida, and in making collections of license fees for "hotels" and "rooming houses" under Section 2127 of the Revised General Statutes of Florida, you must look to Section 2124 as a guide for the definition of these terms as used in Section 2127.

The very purpose "hotel" and "rooming house" are defined by Section 2124, is in order that it might not be necessary to repeat is meant by these terms in all the latter portions of the Act.

Every "hotel" as defined by Section 2124, and every "rooming house" as defined by said Section 2124, should be required to pay the amount of license fees laid down by Section 2127.

Trusting this answers your request for my opinion, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—HOTELS, APARTMENT HOUSES, ETC.

October 31, 1927.

Dear Sir:

The Legislature of 1927 amended Section 2127 of the Revised General Statutes of Florida, relating to license fees on hotels, rooming houses, apartment houses and tenements in this State so that said section now reads as follows:

2127. Amount of License Fee.—The fee to conduct a hotel, rooming house, apartment house or tenement house in this State shall be: For hotels, rooming houses, apartment houses containing five rooms and less than twenty rooms, \$4.00; for hotels, rooming houses, apartment houses or tenement houses containing twenty rooms or less than thirty rooms, \$6.00; for hotels, rooming houses, apartment houses or tenement houses containing thirty rooms and less than forty rooms, \$7.50; for hotels, rooming houses, apartment houses or tenement houses containing forty rooms and less than fifty rooms, \$10.00; for hotels, rooming houses, apartment houses or tenement houses containing fifty rooms and less than sixty rooms, \$12.50; for hotels, rooming houses, apartment houses or tenement houses containing sixty rooms and less than seventy-five rooms, \$15.00; for hotels, rooming houses, apartment houses or tenement houses containing seventy-five rooms and less than one hundred rooms, \$20.00; for hotels, rooming houses, apartment houses or tenement houses containing one hundred rooms and less than one hundred and fifty rooms, \$25.00; for hotels, rooming houses, apartment houses or tenement houses containing one hundred and fifty rooms and less than two hundred and fifty rooms, \$30.00; for hotels, rooming houses, apartment houses or tenement houses containing two hundred and fifty rooms and less than three hundred rooms, \$35.00; for hotels, rooming houses, apartment houses or tenement houses containing three hundred rooms or more, \$50.00; which shall be paid to the Hotel Commissioner before said license is issued, and said license shall be kept in the office of such place in a conspicuous manner, properly framed. Said license may be revoked by either Hotel Commissioner or inspector at any time when the laws and regulations are not being complied with. Provided, that all hotels, apartment houses, rooming houses, tenement houses or other structures in course of construction shall be subject to and required to pay the same schedule of license fees for inspection during construction as they are required to pay herein for inspection when in operation as such. Any person, firm or corporation failing or neglecting to pay the license fee herein required for more than fifteen days after the due date thereof shall in addition to all other penalties imposed by this Act be required to pay an addition fee of fifty percent of the regular license fee so imposed.

Under this section, as amended, I am of the opinion that the words "apartment houses or tenement houses" as the same appear in the amended section cover and embrace not only furnished tenement houses or apartment houses but all tenement and apartment houses, furnished and unfurnished, and that it would, therefore, be the duty of you, as Hotel Commissioner, to collect the license fee fixed by this section. For all tenement houses of less

than twenty rooms you will notice that the amended law has omitted to provide any license fee. Consequently, none can be collected on such tenement houses.

Trusting this answers your inquiry under date of October 31st, requesting my opinion in the matter, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

HEALTH CERTIFICATES—THOSE COMPETENT TO SIGN

Dear Sir:

January 21, 1928.

I have your letter of January 18th, in which you ask my opinion as to what persons are competent under the existing laws to sign health certificates required in the administration of the laws, rules and regulations governing the hotels and restaurants of this State.

My answer is that the character of the evidence required is such as may be required by the Hotel Commissioner or an inspector in his discretion, it being within the power of the Hotel Commissioner to determine what persons he will recognize as registered, licensed or practitioners within the meaning of Section 2153, Revised General Statutes of Florida.

The purpose of the required health certificate is to convince the Hotel Commissioner or his inspector that the employes furnishing the same are free from disease. He should, therefore, require the certificate to be signed by such a physician as would be authorized to make a diagnosis of and treat contagious and infectious diseases under the laws of this State.

The only physicians who are authorized to diagnose and treat contagious and infectious diseases are those who are licensed by the State Board of Medical Examiners of Florida.

Oseopaths, naturopaths and chiropractors are not included in this classification.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—CO-OPERATIVE APARTMENTS.

Dear Sir:

October 17, 1928.

I have your request of October 8th, in which you ask my opinion as to whether or not buildings in this State, commonly known as co-operative apartments, are subject to license by the State Hotel Commission.

My answer to your question will depend upon whether or not such apartments are occupied by persons who have purchased or agreed to purchase units therein or whether the person owning the apartment building and selling apartments is merely leasing or renting the apartments to tenants.

Co-operative apartments occupied or used by persons who have purchased, or have an agreement to purchase an apartment therein, are not subject to the license provisions of the State Hotel law.

On the other hand, if such apartments are leased by an owner or manager in a manner corresponding to leasing or renting the apartments by any ordinary apartment house, the fact that the building may be a partly co-operative apartment building would not defeat the inspection license tax for such portions of the co-operative apartment house which are leased or rented as apartments.

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—APARTMENT HOUSES, TENEMENTS, ETC.

October 30, 1928.

Dear Sir:

Under Section 3353, Comp. Laws of 1927, a rooming house is defined to be every apartment house, tenement house, boat, vehicle or other structure kept, used, maintained, advertised as or held out to the public to be a place where living quarters, sleeping or housekeeping accommodations are furnished for pay to transient or permanent guests or tenants, in which five or more rooms are used for the accommodation of such guests, but which does not maintain public dining rooms or cafes in the same building, or in buildings in connection therewith. Accordingly, under the definition made by the law a building occupied by two or more families in which five or more rooms are furnished or provided for pay for the accommodation of transient or permanent guests or tenants is a rooming house and, as such, comes under the jurisdiction of the Hotel Commission and is subject to inspection. Section 3353, above referred to, provides that the hotel inspector shall issue, upon proper application, a license to conduct rooming houses. The amount of this license fee is fixed on a graduated scale in Section 3356, Comp. Laws of 1927, which reads as follows:

The fee to conduct a hotel, rooming house, apartment house or tenement house in this State shall be: For hotels, rooming houses, apartment houses containing five rooms and less than twenty rooms, four dollars; for hotels, rooming houses, apartment houses or tenement houses containing twenty rooms or less than thirty rooms, six dollars; for hotels, rooming houses, apartment houses or tenement houses containing thirty rooms and less than forty rooms, seven dollars and fifty cents; for hotels, rooming houses, apartment houses or tenement houses containing forty rooms and less than fifty rooms, ten dollars; for hotels, rooming houses, apartment houses or tenement houses containing fifty rooms and less than sixty rooms, twelve dollars and fifty cents; for hotels, rooming houses, apartment houses or tenement houses containing sixty rooms and less than seventy-five rooms, fifteen dollars; for hotels, rooming houses, apartment houses or tenement houses containing seventy-five rooms and less than one hundred rooms, twenty dollars; for hotels, rooming houses, apartment houses or tenement houses containing one hundred rooms and less than one hundred and fifty rooms, twenty-five dollars; for hotels, rooming houses, apartment houses or tenement houses containing one hundred and fifty rooms and less than two hundred and fifty rooms, thirty dollars; for hotels, rooming houses, apartment houses or tenement houses containing two hundred and fifty rooms and less than three hundred rooms, thirty-five dollars; for hotels, rooming houses, apartment houses or tenement houses containing three hundred rooms or more, fifty dollars; which shall be paid to the Hotel Commissioner before said license is issued, and said license shall be kept in the office or lobby of such place in a conspicuous manner, properly framed. Said license may be revoked by either the Hotel Commissioner or inspector at any time when the laws and regulations are not being complied with: Provided, that all hotels, apartment

houses, rooming houses, tenement houses or other structures in course of construction shall be subject to and required to pay the same schedule of license fees for inspection during construction as they are required to pay herein for inspection when in operation as such. Any person, firm or corporation failing or neglecting to pay the license fee herein required for more than fifteen days after the due date thereof shall in addition to all other penalties imposed by this Act be required to pay an additional fee of fifty per cent of the regular license fee so imposed. (Ch. 6952, Acts 1915-6; Ch. 12053, Acts 1927-1.)

Under this section you will notice that it is the duty of the Hotel Commissioner to collect an inspection license fee from persons, firms or corporation owning and operating rooming houses, containing five rooms or more.

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—APARTMENT HOUSES

October 30, 1928.

Dear Sir:

Complying with your request of October 26th for my opinion in the premises, I beg to advise that under Section 3356 (2127) Comp. Laws of 1927, it is your duty, as Hotel Commissioner, to collect an inspection license fee from owners or operators of apartment houses having five rooms or more in accordance with the graduated scale of such fees prescribed by said Section 3356.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE LIVE STOCK SANITARY BOARD.

STATE LIVE STOCK SANITARY BOARD—CATTLE DIPPING—ARBITRATION OF COSTS

December 27, 1927.

Dear Sir:

I have your letter of December 21st, requesting my opinion as to the manner in which arbitration should be carried out under the provisions of Chapter 9201, Laws of Florida, Acts of 1923, creating the State Live Stock Sanitary Board.

The method of arbitration provided for in the Act was intended to be carried out very informally and did not contemplate arbitration such as would be had under the formal arbitration proceedings held pursuant to the general provisions of law found in the Revised General Statutes or existing at common law.

It is, of course, permissible for the arbitrators to meet and hear testimony concerning parties and witnesses concerning the subject matter of arbitration, if they so desire, but such is not at all necessary. The arbitrators are supposed to be men who are more or less personally familiar with the cost of dipping cattle and with the particular circumstances surrounding the dipping of the cattle, the cost of which is to be arbitrated. This arises from the fact that the arbitrators are appointed by the Live Stock Board and by the cattle owner respectively.

As to the general mode of procedure to be used by the arbitrators in arriving at their decision, I think the case of *Florida Yacht Club vs. Renfro*, 67 Fla. 154, 64 So. 742, will be helpful. The arbitrators provided for by Chapter 9201 act very nearly like those referred to in the above case and in that case the Supreme Court said that such arbitrators are not required to give notice of a hearing to interested parties nor to have any hearing when it is their duty to value or appraise of their own personal knowledge.

In selecting arbitrators, I think the law implies that each party should select persons who would not be disqualified to sit as jurors in the case were the matter submitted to a court of law for determination. The statutes uses the word "disinterested" in referring to the characteristics which should be possessed by the arbitrators and I think that no person who would be subject to challenge as a juror, were the matter under consideration in a court of law, could properly be held to be "disinterested" within the meaning of the statute under which this arbitration is to be held.

As to some general rules which should govern in determining whether a person has a disqualifying interest in the subject matter of litigation, see the opinion of the Supreme Court in the case of *Elliott vs. State*, 77 Fla. 611, 82 Southern 149.

It will be noted that the Florida Supreme Court quotes the case of *Verbette vs. State*, 109 Miss. 94, 67 So. 853, which held that in a prosecution for stealing a dollar's worth of electricity from an electric company a motorman on one of the company's street cars was not a qualified juror.

As arbitrators act both as a judge and jury it is undoubtedly true that such arbitrators must be such men as would be disinterested when considered in connection with the capacities in which they function.

Bearing in mind these general principles, I think the parties selected to act as arbitrators in the matter referred to by you should be truly disinterested within the meaning and intent of Chapter 9201 and that previous causes of difference between the State Live Stock Sanitary Board and Mr. Jernigan, the claimant, can thereby be obviated as far as the selection of arbitrators is concerned.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE MOTOR VEHICLE COMMISSIONER.

TAX EXEMPTIONS—MOTOR VEHICLES.

December 23, 1927.

Dear Sir:

I have your letter of December 21st, reading as follows:

Please furnish this office with your opinion regarding the law with reference to licensing of automobiles owned by disabled veterans of the World War and of the Spanish-American War, and also in regard to the "for hire" fee on automobiles owned by them. There have been several applications received by us from veterans who are of the opinion that they are exempt from this license.

Your opinion on the above will be very much appreciated.

Chapter 12110, Laws of Florida, Acts of 1927, provides that persons who served as officers or enlisted men in the U. S. Army either during the World War or the Spanish-American War and who were honorably discharged and

who are physically disabled to the extent that they are unable to perform manual labor shall be granted a license to engage in any business or occupation in the State of Florida without the payment of any license tax or otherwise provided for by law.

The title of this Act uses the words "occupation tax" in referring to the subject of the exemption. The laws of Florida relating to the licenses for motor vehicles do not provide for any occupation taxes upon the persons either owning or driving such vehicles whether "for hire" or when employed for private use.

On the contrary, the license tax is upon the vehicle itself, regardless of the identity of the owner. You will, therefore, readily see that Chapter 12110 exempting World War veterans, etc., from occupation taxes cannot possibly have any reference to exempting such veterans from the payment of a tax upon motor vehicles owned by them, since the motor vehicle taxes are not "occupation taxes."

Now there is a class of taxes imposed by municipalities upon persons who drive automobiles "For Hire," which taxes are levied upon the occupations of the drivers rather than upon the cars. Such has been the construction placed upon the same by the Supreme Court, which upheld such occupation taxes on drivers of motor vehicles "For Hire," even though the State law prohibits cities from levying any license tax upon motor vehicles either "For Hire" or for private use.

Chapter 12110 undoubtedly exempts disabled World War veterans, etc., from the payment of a city occupation tax levied upon the driver of "For Hire" automobiles but does not exempt said veterans from State license tax imposed upon the motor vehicles under the laws which are administered by your department.

For your information, a pamphlet copy of this law with the construction already placed thereon by me for other parties requesting such construction is enclosed herewith.

Very truly yours,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES OPERATED BY WAREHOUSEMEN—CLASSIFICATION

January 9, 1928.

Dear Sir:

I have your letter of January 6th, requesting my opinion as to the proper classification to be made in the licensing of motor vehicles operated by warehousemen in this State in instances where a charge for drayage is made in connection with the operation of such motor vehicles.

Chapter 10182, Laws of Florida, Acts of 1925, amending Section 1006, Revised General Statutes of Florida, contains the following definition of a "For Hire" vehicle:

"For Hire" as defined in this chapter shall include all motor driven vehicles, or trailers hauled by a motor vehicle, in use for transporting persons, commodities or materials for compensation, or such motor vehicles as may be let or rented for a consideration. Provided, that motor vehicles temporarily used by farmers for the transportation of agricultural or horticultural products from farms or groves

to packing houses or to points of shipment by transportation companies shall not be held to be operating for hire.

It will be noted that under this definition any motor vehicle used for transporting a commodity for compensation, as well as any motor vehicle which may be rented to another for a consideration, is classed as a "For Hire" vehicle.

The last proviso of Section 1011, Revised General Statutes, as amended by this chapter, provides that the Comptroller shall have authority in disputed cases to determine the classification of any vehicle required to be registered under the Act and the amount of the fee charged shall be paid therefor. You, as successor to the Comptroller, would therefore have the same power to determine this matter as the Comptroller would.

There are undoubtedly cases which might be termed as falling within the twilight zone between "For Hire" and for private use classifications, but I think it is quite clear that wherever a motor vehicle is employed for transporting persons or commodities and a separate charge is made therefor by way of drayage, even if the amount charged covers the bare cost of the drayage, the vehicle so employed is a "For Hire" vehicle within the purpose and intent of the law.

The theory upon which a difference is made in the license charged for vehicles for private use and "For Hire" is that a vehicle used under circumstances requiring it to be licensed as a "For Hire" car will be used considerably more over the highways than one designed, adapted to, or employed for, private use only. A much higher rate of tax, therefore, has been fixed for the "For Hire" classification than for the "private use" classification.

I am, therefore, of the opinion that you should require a "For Hire" license for the registration of all motor vehicles used in the transportation of persons or commodities where any compensation is received by the owner or operator of the vehicle for the haul of the person or the commodity, whether the compensation provides a profit to the owner or operator or not.

In every case where the haul is compensated for as a distinct item no matter how indirect the same may be or by what subterfuge the same may be accomplished, the Motor Vehicle Commissioner may classify the vehicle as a "For Hire" vehicle as he has undoubted power to do so under the last proviso of Section 1011 of the Revised General Statutes of Florida, as amended by Chapter 10182, Acts of 1925, which commits the determination of these disputed questions of fact to the Motor Vehicle Commissioner.

I return herewith letter from the Vann Warehouse Company, Jacksonville, Florida.

There are also enclosed herewith copies of letters dated March 24th, 1927, and June 11th, 1927, which may be of value to you.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY AGENCIES—ISSUANCE OF CERTIFICATES ON MOTOR VEHICLE.

Dear Sir:

January 21, 1928.

Section 1 of Chapter 9157, Acts of 1923, defines the term "owner" as used in the Act, as including "any person, firm, corporation or association owning or controlling any motor vehicle by right of purchase, gift or lease."

The question presented by you is whether or not a county is an "owner" of a motor vehicle within the purview of the requirements of Chapter 9157, Sections 2 and 3, requiring the issuance of a certificate of title for registration of motor vehicle with the Motor Vehicle Commissioner.

Owing to the narrow definition of the term "owner" as used in the Act, I am of the opinion that the county would not be held to be within the purview of language applying only to persons, firms, corporations and associations. There is nothing, however, in the Act which would prevent the Motor Vehicle Commissioner from issuing certificates of title to counties and even to agencies of the State owning automobiles as a means of preserving a perfect public record of the titles of same, and in fact it would appear that to register motor vehicles owned by counties and other public agencies would be a salutary requirement to be written into the law.

I would, therefore, suggest that while it may not be required by law that counties procure or be issued certificates of registration of title to motor vehicles owned by them the Motor Vehicle Commissioner might, in the interests of uniformity in the administration of the Act, endeavor to secure registration of the title to these cars by co-operation with the county authorities as a means of determining to what cars the X tags authorized by law are applicable but in such event the statutory fee of \$1.00 which is required to be charged for each original certificate of title issued could not be exacted from counties or other State agencies.

All title certificates issued without charge by voluntary co-operation with counties should be designated in such a manner as to prevent the Motor Vehicle Commissioner being charged in his account with the \$1 fee which would otherwise be collectable on such certificates.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—CERTIFICATES OF TITLE—ISSUANCE.

January 21, 1928.

Dear Sir:

I have your request of January 18th for an opinion on the following question:

In the case of dealers buying out of State cars and selling same before securing title certificate covering same, should we issue tag and should we issue title certificate in the name of the owner to whom the dealer sells the car on application of the dealer, or should we issue certificate of title to dealer in his own name on his application for a certificate of title.

Chapter 9157, Acts of 1923, Section 7, provides as follows:

Section 7. Certificates for Dealers and Manufacturers.—In the case of dealers in motor vehicles, motorcycles, including manufacturers who sell to others than dealers, all of whom are intended to be covered by this and all other provisions of this section, a separate certificate of title, either of such dealer's immediate vendor, or of the dealer himself, shall be required in the case of each motor vehicle in his possession, and the Comptroller shall determine the form in which application for such certificates of title and assignments

thereof shall be made; provided, however, that no such certificate shall be required in the case of new motor vehicles sold by manufacturers to dealers as the term "dealers" is defined in Section One of this Act.

From this section as well as other provisions of the Motor Vehicle Title Registration law it will be observed that all dealers who handle automobiles other than new automobiles received from the manufacturers are required to procure title certificates covering all vehicles in their possession except that where a motor vehicle has been taken in by a dealer from a vendor who has a Florida certificate of title assigned to the dealer, in which event the dealer may have the motor vehicle in his possession based upon the certificate of title issued to his immediate vendor as provided in this section of the statutes.

A certificate of title issued to the immediate vendor in some other state does not appear to be in compliance with the provisions of Section 7.

The purpose of the statute is obviously to provide a complete chain of title to motor vehicles in this State by means of registration of title accomplished through the office of the Motor Vehicle Commissioner and the Act should be so construed as to carry out the legislative intent.

If dealers have authority to bring cars into this State from other states and dispose of them without registration the purpose of the law, which was to provide for the protection from theft and to provide for registration from the original source of title to the ultimate holder, would be defeated. Consequently, all dealers buying out of the State cars should secure title certificates covering same before selling such cars and when such cars are sold the title should be transferred in the regular way to the vendee, to whom tag for the car may be issued upon proper application.

I return herewith letter submitted by you from the License Bureau of the Jacksonville Motor Club dated January 18th.

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAX ON MOTOR VEHICLES—COLLECTION BY COUNTIES AND CITIES.

February 8, 1928.

Dear Sir:

I note the inquiry from your Orlando agent relative to the right of counties and municipalities to impose license tax on motor vehicles.

Section 1013, Revised General Statutes, which was Section 8 of Chapter 7275, Acts of 1917, provides that the registration fee imposed by said Chapter shall be in lieu of any county or municipal license fee, and that it shall be unlawful for any county or municipality to collect any license or registration fee on any motor driven vehicle, provided that all counties and municipalities may charge an additional license tax on all motor vehicles used for hire, which additional tax shall not exceed 50 percent of the State license tax.

Section 1013 of the Revised General Statutes was amended by Section 6 of Chapter 8410, Acts of 1921, by the provisions of which it is made unlawful for any county or municipality to collect any license or registration fee on

any motor driven vehicle, trailer, semi-trailer or motorcycle side car in this State.

It, therefore, appears clear that counties and municipalities are without lawful authority to charge or collect a license tax on any motor vehicle. However, it has been held by our Supreme Court that this provision of the law does not deprive the municipality of authority to require a license to be paid by drivers of automobiles and trucks in the municipality for hire, where such authority has been duly conferred by charter or other statute. *State ex rel. Harris vs. Quigg*, Chief of Police, 86 Florida 51, 96 Southern 8. If it comes as a regulatory measure and is duly authorized by law, and is not an attempt to impose an additional tax on such motor vehicles, it may be lawfully done.

I am returning herewith enclosures handed me by your Mr. Dew.

Yours very truly,

H. E. CARTER, Assistant Attorney General.

LICENSE TAX ON PASSENGER BUSES FOR PRIVATE USE ONLY
UNDER SECTION 1011.

February 7, 1928.

Dear Sir:

I have your letter of February 3rd, in which you request my opinion as to the meaning of that part of Section 1011 (Acts of 1925, Chapter 10182), Revised General Statutes of Florida, as amended, which relates to the fees to be charged for license tags on "passenger automobiles or buses with a seating capacity over seven."

You state that the question has arisen as to the respective rates to be charged on such vehicles when they are registered as "For Hire" as distinguished from registration for "Private Use" as when operated by individuals or companies who do not make a direct or indirect charge for the transportation service, such as buses used to convey workmen to and from work, prospective purchasers to and from view of real estate offered to them for sale, *et cetera*.

Before answering your inquiry I have examined the opinions of my predecessors in the office of Attorney General with the view of ascertaining whether or not the past practice of treating these buses, whether "For Hire" or "Private Use" on the same basis, has been passed upon and upheld by them. I have failed to locate any opinion on the subject rendered since 1925, when Section 1011 was amended by Chapter 10182. The case presented by you is, therefore, novel.

From a casual reading of the statute (Chapter 10182, Acts of 1925), considered by itself, it would appear that the only authorized difference between the charges for registration of a "For Hire" motor bus as distinguished from a registration for "Private Use" is the cost of a "For Hire" certificate container, i. e., 50 cents.

In construing a statute, the *entire* statute is to be considered in ascertaining its intent, and effect must be given to every part of a section if it is reasonably possible to do so, and a *mere literal construction* ought not to prevail, if it is opposed to the intention of the Legislature apparent by the statute as a whole, and if the words used in the statute are sufficiently flexible to admit of some other construction, such other construction is to be adopted to effect-

uate the intention. *Snowden vs. Brown*, 60 Fla. 212, 53 So. 548; *State vs. Burr*, 84 So. 62; *State vs. Phillips*, 70 Fla. 340, 70 So. 367. Courts will not follow the letter of a statute when it leads away from the true intent and purposes of the Legislature and to conclusions inconsistent with the general purpose of the Act. *Curry vs. Lehman*, 55 Fla. 847, 47 So. 18. An interpretation of a statute, even though the language of the statute may apparently authorize such interpretation, must not lead to absurd consequences, if the statute, considered as a whole, is fairly susceptible of another construction that will aid in accomplishing the manifest intent and purpose designed by the Act. *Miami vs. Romfh*, 66 Fla. 280, 63 So. 440.

Applying the foregoing rules to Chapter 10182, Acts of 1925, which amended Section 1011, Revised General Statutes, what is our conclusion?

The whole automobile license tax act, throughout its legislative history, has made and still makes, a marked distinction between automobiles "For Hire" and those "For Private Use," on the theory that an automobile "For Hire" will use the roads more, wear them out more, and, therefore, should pay a higher license fee. This distinction clearly appeared in Section 1011, Revised General Statutes, before it was amended by Chapter 10182, Acts of 1925, and such distinction still appears *plainly and beyond dispute as to both motor trucks and passenger vehicles*, with the exception of passenger automobiles and busses with a seating capacity over seven. In reference to these the statute says:

Passenger automobiles or busses with seating capacity over seven, exclusive of driver, per 100 lbs. (or major fraction thereof), gross weight, pneumatic tires, \$1.50. Solid tires, \$3.00, *and shall in addition to the fee per hundred weight provided above pay per passenger as follows*: Over 7 and not over 16, driver included, \$10.00 each. Over 16, driver excluded, \$15.00 each.

Passenger automobiles for hire, with seating capacity less than seven, driver excluded, per hundred pounds (or major fraction thereof) gross weight, \$.75, and in addition thereto shall pay per passenger capacity, driver excluded, \$5.00.

and by reason of the ambiguous language used, as well as the ambiguous arrangement of such language, it may be contended that, even though a passenger automobile or bus having a seating capacity over seven is intended for "Private Use" only, it should nevertheless pay a "per passenger" tax at the rate of \$10.00 or \$15.00 each, in addition to the hundredweight tax.

It is well known that the purpose of the Legislature in passing Chapter 10182, Acts of 1925, to amend Section 1011, Revised General Statutes, was to abolish the fifteen different classes of tags provided for by Chapter 8410, Acts of 1921, and such purpose appears *on the face of the Act*, because in place of fifteen separate kinds of tag series we now have but four—"A," "C," "G" and "M." The "X" tag is new with the 1925 Act and is rather an identification tag than a license tag.

Construing the above quoted provision of the statute with reference to "passenger automobiles and busses with seating capacity over seven" it appears to me that the whole history of automobile license tag legislation in Florida requires that such construction be adopted which is in keeping with the obvious legislative purpose to preserve the manifest and *substantial* distinction between the license fees on "For Hire" passenger automobiles and

busses as distinguished from same when intended only for "Private Use." In this connection it will be noted that such distinction is plainly preserved as to passenger automobiles having a seating capacity of *less than seven*, and it will also be noted that the tax on those is based on "passenger capacity," meaning capacity for carrying passengers from whom some revenue is derived, either directly or indirectly. So the theory of the "per passenger" tax is obviously to tax *that which is used to produce revenue for the car owner*, namely, his seating capacity devoted to "passenger for hire" because in every instance mentioned in the statute *the driver is excluded* from the calculation.

I am therefore, of the opinion that the provision of the statute reading as follows:

* * * and shall in addition to the fee per hundredweight provided above pay per passenger as follows: Over seven and not over sixteen, driver included, \$10.00 each. Over sixteen, driver excluded, \$15.00 each,

when used in connection with the license fees on passenger automobiles and busses with seating capacity *over seven*, is limited to passenger automobiles of this class when used "For Hire" and that when not used "For Hire" this tax should not be collected upon a passenger automobile or bus registered solely for "Private Use."

I think this construction carries out the purpose of the law and is such as courts would give to the law, should this question be tested.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TITLE CERTIFICATES ISSUED ON CARS SOLD FOR STORAGE
CHARGES BY GARAGEMEN AND WAREHOUSEMEN.

August 14, 1928.

Dear Sir:

Section 2 of Chapter 9157, Acts of 1923, Laws of Florida, relating to the issuance of motor vehicle title certificates, provides that the Comptroller (Commissioner of Motor Vehicles), if satisfied that the applicant is the owner of the motor vehicle or otherwise entitled to have the same registered in his name, shall thereupon issue to the applicant a proper certificate of title over his signature, authenticated by his official seal.

Section 5 of the Act provides that the Comptroller (Commissioner) may refuse to issue a certificate of title when he shall determine that the applicant for such certificate is not entitled thereto and also he may for a like reason but after notice and hearing, revoke a registration already acquired on any outstanding certificate of title. Under existing statutes of the State the duties of the Comptroller in this respect now devolve upon the State Motor Vehicle Commissioner.

The purpose of the Title Registration Act was to so regulate the transfer of title to motor vehicles as to make the theft of same difficult, if not impossible, and to the end of effectuating this intent and purpose should the law be construed.

As the title certificate issued by the State Motor Vehicle Commissioner is undoubtedly *prima facie* evidence that the certificate holder thereof is entitled to the rights and privileges thereby conferred, as under the law no license

for the operation of a motor vehicle can be issued until the operator first proves his title to the vehicle, and this he can only do by his certificate of title.

Consequently, the official who administers the law cannot be too particular in requiring proof of ownership before he issues certificates of title on motor vehicles. This is true because the issuance of a certificate of title to one person precludes the issuance of another certificate on the same automobile and also because the issuance of a certificate of title is essential in order to enable the owner of the vehicle to procure a license to operate the same on the roads of this state.

With these general principles in mind, I beg to advise that in my opinion the State Motor Vehicle Commissioner should not issue a certificate of title to one who has acquired title to a motor vehicle under Sections 3519-21, Revised General Statutes of Florida, except in those cases where it is made to appear that the statute in question has been strictly complied with and where it is also made to appear that the case is one in which such sections of the law may be properly applied.

Under the present statutes of this State there is no lien given to garages for the mere storage of motor vehicles and the only way in which a car can be lawfully sold and the title divested for storage charges on automobiles is either:

1. By judicial proceedings in which the claim for storage is reduced to judgment and the title of the car sold by the court in satisfaction of such judgment; or,

2. By the terms of a specific contract under which the person with whom the car is stored is authorized to sell the same for storage charges in the event the same is not called for within a specified time.

Most garages conducting a storage business receive for storage and issue to the persons storing the car a duplicate card or tag, which contains a written contract to the effect that if the car is not called for within the time specified the car may be sold for the charges which may have accrued thereon.

In such cases, where a car has been stored pursuant to such a contract, I am of the opinion that you are authorized to issue a certificate of title to the purchaser of such car upon there being filed with you a copy of the contract, together with a sworn statement of the proceedings taken under it to divest the title but in the absence of a specific contract of some kind to the effect that the car may be sold for storage charges, the only way in which the title can be lawfully divested is by the institution and carrying out of judicial proceedings under which the car is sold to satisfy a judgment for the storage charges and in such event a certificate of title should only be issued when a certified copy of the judgment and execution is filed with the State Motor Vehicle Commissioner.

Recently, the contention has arisen as to whether or not the statutes of the State of the State of Florida, relating to warehousemen, are applicable to garages which store automobiles for hire.

While I am of the opinion that the Warehouseman's Act in its present form is not broad enough to cover the business of storing automobiles, I notice cases where it is made to appear that an automobile garage is acting under the Warehouseman's Act and is giving receipts provided for by the Act.

I think the Motor Vehicle Commissioner would be authorized in issuing a title certificate based on proceedings had under the Warehouseman's Act and leave it to some court to determine whether or not the action taken under the Warehouseman's Act is legally sufficient to divest the title.

In my opinion the State Motor Vehicle Commissioner cannot be too careful in the issuance of title certificates on automobiles as the weight of such certificates as evidence of title depends upon the degree of care exercised in administering the law. If the State Motor Vehicle Commissioner should issue title certificates to any and every person who is willing to make an affidavit that he is the owner of the car for which he is applying for a certificate of title, the law itself would become practically worthless as the title certificate would then amount to no more than the affidavit of the applicant that he or she had title to the car.

The law contemplates that the Motor Vehicle Commissioner shall require substantial evidence of ownership before he issues a title certificate and in the issuance of title certificates based on judicial or extra-judicial proceedings it is the duty of the Motor Vehicle Commissioner to see that such proceedings are had in substantial compliance with the law, as the issuance of certificates pursuant to such proceedings has the legal effect of cutting off the right of the admitted owner of an automobile in favor of some stranger to the title, whose right depends upon proceedings against such owner, which are denominated in law proceedings in *invitum*, and should, therefore, be strictly construed.

My advice is that all garage owners conducting a storage business be advised that if they expect to obtain title certificates upon cars sold by them for storage charges that they should be prepared to show that they have either resorted to judicial proceedings or have sold cars for such charges by virtue of a special contract, permitting same to be done or that same was sold under the general provisions of the Warehouseman's Law.

Trusting this answers your inquiry of August 2nd, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS—RECEIPT FOR FINES COLLECTED.

March 21, 1928.

Dear Sir:

I beg to acknowledge the receipt of your communication of March 19th, enclosing letter received by you from Mr. Enos E. Eckhart, 1749 Turner Street, Allentown, Pennsylvania, who complains that on November 5th he was traveling through a certain town in this State where he was held up on an alleged charge of speeding, taken before a Justice of the Peace and fined \$18.10, paid his fine and asked for a receipt for same, which he claims was refused him.

Under the laws of this State any officer who collects any money whatsoever under color of his office and who refuses to give a receipt therefor is guilty of a violation of Section 5354, Revised General Statutes of Florida, which provides that imprisonment not exceeding one year and fine not exceeding \$500 shall be imposed for any malpractice in office.

No police officer, whether he be a policeman, deputy sheriff or constable,

has a right to collect money from persons arrested by him, whether by way of a fine or otherwise, and where he has arrested a person and taken such person before a magistrate and such magistrate has imposed a fine such fine should be collected and accounted for in the manner provided by law, and if no receipt is given showing that the money has been collected under authority of law and by what authority it was collected, the inference may well be drawn that the officer is guilty of extortion of such money without any authority.

My suggestion is that the case complained of by Mr. Eckhart be referred to the State Attorney of the Fourth Judicial Circuit of the State of Florida, Hon. Chas. M. Durrance, for investigation, where an indictment against the officer in question can be found wherein the complaint made by Mr. Eckhart is sustained by the evidence.

I might add that in addition to the fine and imprisonment provided for giving a receipt therefor is also subject to being removed from office for any officer who collects money from an automobilist in this State without such malfeasance if he be a State or county officer.

Very truly yours,

FRED H. DAVIS, Attorney General.

FLORIDA REAL ESTATE COMMISSION.

REAL ESTATE BROKERS—LICENSE LAW.

Dear Sir:

December 2, 1927.

Referring to your letter of December 14th, with reference to the effect of the recent opinion of the Supreme Court, affirming the test case brought from Orange county to determine whether the occupational license tax on real estate brokers was repealed, I beg to advise that my opinion in the matter has been that administrative fees of Chapter 12223 are not affected by Chapter 11336 further than as indicated in the Act itself; but that insofar as the taxing feature of Chapter 11336 was concerned that it was not shown that it was the intention of the Legislature to repeal the occupational license tax feature and therefore that such feature being a revenue one still remains in force.

It is my view insofar as Chapter 12223 covers the entire field of operation of Chapter 11336 that such Chapter 12223 does supersede and take the place of Chapter 11336 since it is a regulation of the business of real estate brokerage in this State but that the taxation feature of Chapter 11336 for revenue purposes remains in effect because it does not clearly appear that the Legislative intent was to thus renounce one of its large sources of income.

I think that this was the view that the the Supreme Court had when it affirmed the case, even though no opinion was rendered.

Trusting this clarifies our position in the matter, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

REAL ESTATE BROKERS AND SALESMEN—LICENSE TAX.

Dear Sir:

January 3, 1928.

I have your letter of December 31st, requesting my views as to the proper amount of occupational tax to be paid by real estate brokers and salesmen

under Section 2 of Chapter 11336, Acts of 1925, Laws of Florida, construed in connection with Chapter 12223, Acts of 1927, Laws of Florida.

Section 2 of said Chapter 11336 provides for an occupation tax of \$10 to be paid by each person, firm, corporation, co-partnership, or association doing business as a real estate broker or salesman.

The annual State license fee for each real estate salesman is therein fixed at \$5.00.

Paragraph (f) of Section 1 of Chapter 12223 defines a broker as any person, partnership or corporation who is a registrant under said Act.

It would, therefore, appear that the X. Company to which you referred in your letter, which is a corporation registered as a real estate broker would be compelled to pay an occupational license tax of \$10.00.

The question then arises as to what persons, etc., are real estate salesmen who must pay the \$5.00 a year license tax provided for by Section 2 of Chapter 11336.

The answer to this question seems to be found in the definition of a real estate salesman which is found in Section 1 of that Act, which provides:

A real estate broker is and shall be any person, firm, partnership, co-partnership, association or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, rents or offers for rent, any real estate or the improvements thereon for others, as a whole or partial vocation.

A corporation which has paid its occupational license tax to the State and been licensed as a broker undoubtedly has to transact the business for which it was licensed through such officers and agents as it might employ and it does not seem to be contemplated by the law that the officers and agents who act merely as such in the transaction of the corporate business shall be considered as engaging in an occupation separate from that of the corporation itself.

I am, therefore, of the opinion that none of the ordinary officers of a brokerage corporation which has paid \$10 license tax fee to act as a broker are liable to a further payment of an individual occupational license tax to enable them to perform the duties of the corporation.

As far as occupational license taxes are concerned, the tax is levied upon the occupation as such, whereas the registrations required by the provisions of Chapter 12223 are regulatory in their nature and may well be required in the exercise of a sound policy without regard to whether or not the brokers or salesmen are engaged in an occupation as such.

It would, therefore, appear that, while specially employed agents of a corporation who in effect had a special occupation as such might be subject to a salesman's occupational license tax, the officers of the corporation doing a brokerage business and which has paid a license fee for that privilege and through whom the corporation must necessarily transact its business should not be considered as engaging in a separate occupation, such as would subject them to payment of a special occupational tax in addition to that paid by the corporation.

It is quite possible that where corporations are involved it will be found that there are few persons who would have to pay an occupational license

tax as a salesman in view of the status of a salesman as now fixed by the 1927 Act.

I can certainly see no reason why the president, secretary and treasurer, or other managerial officers of a corporation may not transact the corporate business if the corporation has paid its occupational license tax without being considered as engaging in a separate occupation as salesman, so far as the meaning and intent of the occupational license tax provisions of Section 2, Chapter 11336, are concerned.

Trusting this gives you the information that you request, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BROKERAGE PARTNERSHIP—LICENSE TAX

January 24, 1928.

Dear Sir:

Your letter of January 9th has been called to my attention since my return to Tallahassee.

My opinion is that both Chapter 11336 and Chapter 12223, Laws of Florida, recognize partnerships as entities similar to corporations for the purpose of the assessment and collection of occupational license taxes under Chapter 11336 and insofar as the members of a partnership engaged in a brokerage business for the benefit of the partnership enterprise is concerned it would seem that they are merely executing the business of the partnership as agents therefor and are not subject to a special or separate tax under Chapter 11336.

However, should a member of a brokerage partnership engage in the brokerage business for his own personal profit rather than as agent for the partnership, I think he would be required to pay a separate occupational license tax. In short, it would seem in licensing partnerships under the provisions of Chapter 11336, Acts of 1925, Special Session, that such partnerships should be treated in like manner as corporations are treated for the purpose of administering the license statutes.

Trusting this answers your inquiry and regretting that the matter has been delayed, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

STATE ROAD DEPARTMENT.

STATE ROAD DEPARTMENT—CONSTRUCTION OF CHAPTER 11297,
ACTS 1927

October 17, 1927.

Dear Sir:

I have your request of this date for my opinion as to the validity of Chapter 12297, Acts of 1927, Laws of Florida, entitled "An Act to authorize and empower the State Road Department of the State of Florida to borrow money at a rate of interest not to exceed six percentum per annum under certain circumstances and to provide the manner in which such money shall be repaid," together with the proceedings adopted by the State Road Department the rounder, which you have submitted to me in connection with your request.

I have carefully examined the statute in question and am of the opinion

that the same is a valid and enforceable Act. In fact it is in line with other statutes of the State of Florida of like nature, for example, Sections 1178 and 1179 of the Revised General Statutes of Florida, authorizing the Everglades Drainage District to borrow money, which sections have been involved in suits brought to invalidate the Act, and the law sustained.

Also, the proceedings under the Act, as prepared by Hon. B. A. Meginnis, Department Attorney, and adopted by the State Road Department under date of October 3rd, 1927; and approved by the Governor as of the same date, have been carefully examined by me and I find them to be in conformity with the statute and accordingly give it as my opinion that based on said statute and the proceedings referred to, the State Road Department has lawful authority to borrow the money recited in the proceedings and to give its note to repay the same, in the form submitted with copies of the proceedings are lawful and valid.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

STATE SHELL FISH COMMISSIONER.

LICENSES—EFFECT OF CHAPTER 11838, ACTS 1927.

October 17, 1927.

Dear Sir:

I have your letter of October 7th, asking my opinion as to whether or not the repealing clause in Chapter 11838, which abrogates that portion of Section 9, Chapter 10527, insofar as the fresh water fishing is affected, has the further effect of validating fishing licenses issued under Chapter 10527, Acts of 1925.

A license is a revocable permit to do a thing licensed to be done in the permit. The statute contains no reference to existing licenses issued under the existing law but merely repeals the law in question as of a certain date.

It appears to me that in the absence of some clearly expressed intention on the part of the Legislature to revoke licenses already granted, for which the fee has been paid under the existing statutes, that such a construction should not be adopted.

I am, therefore, of the opinion that any license issued for fresh water fishing under a law which was in force at the time the license was issued should be recognized as continuing for the remainder of the term for which issued.

While the contrary construction would be permissible, I prefer to adopt that which is more conformable to the justice of the case in the absence of some requirement to hold otherwise.

Cordially yours,

FRED H. DAVIS, Attorney General.

MULLET OR MULLET ROE—POSSESSION OF DURING CLOSED SEASON

December 13, 1927.

Dear Sir:

Replying to your letter of December 12th, with reference to the question of whether or not mullet may be possessed and sold in Florida during the

closed season when it appears that such mullet was shipped into this State from Alabama and other states.

I beg to advise that in my opinion, based upon the holding of the Supreme Court in the case of *White vs. State*, 113 Southern 94, the present statute is not broad enough to lawfully prohibit the possession of mullet in Florida when it is established by proof that such mullet has been imported into Florida from another state. However, the provisions of the statute to the effect that the possession of any fresh, or freshly salted mullet shall be *prima facie* evidence of the violation of the law are in full force and effect and any person, firm or corporation in Florida found in possession of mullet or mullet roe during the closed season may be lawfully arrested and the mullet or mullet roe seized under *prima facie* evidence provision of Section 5287 of the Revised General Statutes of Florida or other appropriate Acts of the Legislature relating to this subject, subject to the right of the defendant in such cases to make it appear by legal evidence that the fish, by reason of their having been imported from another state, are not subject to the Florida law.

In short, the possession of mullet or mullet roe during the closed season is *prima facie* evidence that the fish are fish caught in the waters of Florida and of the fact that same are being unlawfully possessed in Florida in violation of the law but this *prima facie* evidence is a rebuttable matter and it would be a question for the jury to determine, in the case of a trial of the issue, whether or not the defendant had produced sufficient proof to overcome the *prima facie* effect of showing that mullet or mullet roe were found in defendant's possession during the closed season.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—WHOLESALE FISH DEALERS

February 27, 1928.

Dear Sir:

I have your request under date of February 25, 1928, for my opinion as to the validity of Section 7, Chapter 10123, Acts of 1925, which provides in part as follows:

A resident wholesale fish dealer shall be required to pay an annual license tax of fifty dollars and a resident retail dealer shall be required to pay an annual license tax of five dollars. A non-resident or alien wholesale fish dealer shall be required to pay an annual license tax of five hundred dollars. A non-resident or alien retail fish dealer shall be required to pay an annual license tax of fifty dollars, as against the treaty entered into between the United States and Italy, ratified and proclaimed in 1871, the pertinent portions of which are as follows:

There shall be between the territories of the High Contracting Parties a reciprocal liberty of commerce and navigation. Italian citizens in the United States, and citizens of the United States in Italy, shall mutually have liberty to enter with their ships and cargoes all the ports of the United States and of Italy respectively, which may be open to foreign commerce.

They shall also have liberty to sojourn and reside in all parts whatever of said territories. They shall enjoy respectively, within

the states and possessions of each party the same rights, privileges, favors and immunities and exemptions for their commerce and navigation as the natives of the country wherein they reside, without paying other or higher duties or charges than are paid by the natives, on condition of their submitting to the laws and ordinances there prevailing. * * *

I am of the opinion that the claim advanced by Dr. H. V. Mariani, Royal Consular Agent of Italy, who contends that this treaty exempts Italians from the payment of the \$50 retail dealers' license tax and places them on the same footing as citizens of Florida so as to entitle them to a retail fish dealer's license of \$5 is not well founded in law. See *ex parte* Gilletti, 70 So. 446, where the Supreme Court of Florida held that the provisions of the Shell Fish Law of Florida in exacting a higher rate of license tax upon non-residents and aliens than was charged to residents as construed and applied in that case did not violate either Constitutional or treaty rights. Of course, the statute under consideration in that case was different from that referred to above but the principle of law underlying the right to charge an alien or non-resident more than a resident is the same.

The theory of these acts is that fish belong to the citizens of the State and that the State has the right to absolutely prohibit anyone except citizens from taking and dealing in such fish. The right to prohibit absolutely includes the right to attach any condition to a permit short of absolute prohibition. See *Patzone vs. Pennsylvania*, 232 U. S. 138; *Traux vs. Raich*, 239 U. S. 33.

Trusting this will answer your request, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CLEARWATER BAY—OPERATION OF SHELL FISH LAWS.

Dear Sir:

March 8, 1928.

I am in receipt of your letter of March 2nd, requesting my opinion as to whether or not the City of Clearwater has a right to regulate fishing in Clearwater Bay in view of Section 1258 of the Revised General Statutes of Florida, which reads as follows:

That all fish in the rivers, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connected with the Gulf of Mexico and the Atlantic Ocean, or in the Gulf of Mexico or Atlantic Ocean, within the jurisdiction of the State of Florida, are hereby declared and shall continue and remain the property of the State of Florida, and may be taken and used by citizens of this State, and persons not citizens of this State, subject to the restrictions and reservations hereinafter imposed by this article.

I am of the opinion that the Shell Fish Commissioner has exclusive jurisdiction over fishing in the bay referred to and that even though the territory limits of the City of Clearwater may embrace this bay the City of Clearwater has no jurisdiction to interfere with the execution and operation of the General State Law which contravenes the jurisdiction of any city over fish which are the property of the State and subject to its recommendation and disposal.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHELL FISH COMMISSIONER AND DEPUTIES—POLICE POWER.

June 30, 1928.

Dear Sir:

I have your request of June 30th, asking my opinion as to whether or not the terms and provisions of Section 1273, Revised General Statutes of Florida, which reads as follows:

Duty of Shell Fish Commissioner.—The Shell Fish Commissioner, or his duly authorized deputies, shall enforce the provisions of this law, and for this purpose they are constituted State police officers, with full police powers to arrest without warrant anyone violating any of the provisions of this article. The said Shell Fish Commissioner, or his deputies, shall have authority, without warrant, to board and search any vessel or boat, or enter any fish house, warehouse or other building in which fish or nets are kept, which they may have cause to believe that fish taken out of season are stored, or that contains illegal nets.

have been affected, modified, repealed or amended by anything contained in Chapter 9321, Acts of 1923, Laws of Florida, entitled:

AN ACT relating to the issue of search warrants and to the execution of same, and providing penalties for the violations of the provisions of this act.

A reference to Chapter 9321, Acts of 1923, discloses that said Act contains no general repealing clause and it was the obvious purpose of the Legislature not to have said Act operate as a repeal or amendment of any other provision of the law except insofar as it was necessary to give rise to a field of operation for the 1923 Act.

I find nothing in Chapter 9321 or any amendment thereto which in anywise operates as an amendment or repeal of Section 1273 above referred to, and I am of the opinion that Section 1273, Revised General Statutes of Florida, is still in full force and effect.

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—WHOLESALE FISH DEALERS.

September 8, 1928.

Dear Sir:

Section 5 of Chapter 10123, Acts of 1925, requires a resident wholesale fish dealer to pay an annual license tax of \$50.

When licenses are issued under this section, such licenses contemplate an authorization to transact business at a specific place and do not authorize the peddling of fish by making direct sales from wagons and trucks to local dealers.

Dealers loading up trucks with barrels of fish and sending such trucks out over the State for the purpose of selling fish from such trucks direct to local retail dealers without having taken previous orders therefor are doing a peddling business, which requires a license tax of \$225 for each county under Section 950, Revised General Statutes.

The only alternative for the dealers to avoid the taking out of licenses as peddlers would be for such dealers to take out a separate wholesale deal-

er's license at each place or point at which sales of the character above mentioned are made.

Trusting this answers your request of September 8th for my opinion in the premises, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SALT WATER FISH ACT—JURISDICTION

September 29, 1928.

Dear Sir:

Complying with your request of September 28th as to my opinion as to the effect of the opinion of the Florida Supreme Court recently rendered in regard to Chapter 13529, Acts of 1927, Laws of Florida, I beg to advise as follows:

Chapter 10527, Acts of 1925, provides as follows:

An Act to regulate the taking of fish in the fresh and salt waters of the counties of Escambia, Santa Rosa, Okaloosa and Walton, of the State of Florida; to provide for the licensing of sport fishermen in the said counties; to provide for the enforcement thereof and a rule of evidence in prosecutions thereunder; and for the forfeiture of fishing tackle and devices unlawfully used.

The enforcement of this Act was placed on the Shell Fish Department. Chapter 13529, Act of Legislature of 1927, provides as follows:

An Act to declare and designate as fresh water certain inland salt waters in Walton and Okaloosa counties; and placing same under the law governing fresh water fish, and to regulate the taking of salt water trout.

The salt water designated under this Act is as follows:

That portion of Santa Rosa Sound lying in the boundaries of Okaloosa county, also the waters known as the "Narrows"; Choctawhatchee Bay; all of the bayous, ponds and inlets opening on Choctawhatchee Bay, including therein Cawniers' Bayou, Five-Mile Bayou, Don Bayou, Nigger Bayou, Little Bayou, Boggy Bayou, Rocky Bayou, Joe's Bayou, Indian Bayou, Basin Bayou, Hog Town Bayou, Alaquaw Bayou and Jolly Bay, and all other inlets and bayous at the mouth of the Choctawhatchee River, and all other waters of Choctawhatchee Bay within the boundaries of Walton and Okaloosa counties.

Section Five of Chapter 13529, Act of 1927, provides as follows:

All laws or parts of laws in conflict herewith are hereby repealed.

This Act was approved by the Governor June 8th, 1927, and abrogated the provisions of Chapter 10527 insofar as it affected the salt waters in Walton and Okaloosa counties, and automatically relieved your department of the enforcement of the law in these certain waters.

Chapter 11838, General Game and Fresh Water Fish Act, passed by the Legislature of 1927, and approved by the Governor June 10th, 1927, two days after Chapter 13529 was approved, provided as follows in Section 75:

All other general or special laws or parts of general or special laws relating to game, fresh-water fish, birds or fur-bearing animals, whether in conflict herewith or not, are hereby repealed.

The opinion of the Supreme Court, June term, 1928, by Mr. Justice Ellis and concurred in by Justices Strum, Brown, Whitfield and Buford, in the State of Florida ex rel. Claude Hall, Plaintiff in Error, vs. P. J. Steel, as Sheriff of Okaloosa County, Florida, defendant in error, is in substance that the repealing clause of Chapter 11838 repeals Chapter 13529 as it was approved two days after the approved of Chapter 13529.

I am of the opinion that the salt waters enumerated now come under the jurisdiction of the General Salt Water Fish Act and are not subject to any restrictions of Chapter 10527, Chapter 13529 or Chapter 11838.

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAX—RESTRICTION UPON MUNICIPALITIES TO IMPOSE.

October 22, 1927.

Dear Sir:

In my opinion Section 1268 of the Revised General Statutes is a restriction upon the right of municipalities to impose additional license taxes on the same subject matter covered by licenses issued by your department.

The only exception to this would be some clearly stated charter provision passed subsequent to the adoption of the Revised General Statutes. Such does not appear to be the case with the City of Palatka, if the provision is as recited in your letter of October 20th

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS.

The following are a few of the opinions rendered by this office to County Officers in various counties of the State which may be of interest to the public generally:

COUNTY COMMISSIONERS.

COUNTY COMMISSIONERS—COMPENSATION.

Dear Sir:

February 28, 1927.

Your favor of the 25th inst. has been received.

Clerks of the Circuit Court are paid their compensation in fees but members of the Board of County Commissioners, including the chairman, are paid their compensation by per diem and mileage or by salary in some cases. The per diem or salary of members of the Board of County Commissioners includes compensation for all services rendered except mileage. Consequently, they would not be authorized to charge fees for any particular or special service unless the statute so provided.

Very truly yours,

J. B. JOHNSON, Attorney General.

FINE AND FORFEITURE FUND—TRANSFER OF FUNDS FROM OUTSTANDING INDEBTEDNESS FUND.

Dear Sir:

June 16, 1927.

I have your letter of June 8th, asking my opinion as to whether or not the Board of County Commissioners of Wakulla county have the right to re-

ceive the maximum tax levy limit for the fine and forfeiture fund by increasing the levy for outstanding county indebtedness and transferring funds from the outstanding indebtedness fund to the fine and forfeiture fund of the county.

The statutes appear to contemplate the fact that the fine and forfeiture fund, together with the authorized special tax levy for same, shall be self-sustaining.

Section 1526 of the Revised General Statutes provides that it shall be unlawful to transfer the money or any part thereof from one fund to another fund, or to pay from one fund the expenditures legally payable from another fund except by resolution of the Board of County Commissioners, which said resolution must be approved by the State Comptroller and the County Treasurer shall not make any transfers of money from one fund to another except by resolution as provided for and in case of any question arising as to the proper fund from which any payment should be made the decision of the State Comptroller should govern.

The statutory authority to levy a tax to pay the outstanding indebtedness of a county was given to enable the county to take care of such outstanding unpaid indebtedness as it might have, and it should be, paid in order to keep up the credit of such county.

It would not be lawful, in my opinion, to use the power given the board to levy tax for outstanding indebtedness as a means of indirectly increasing the amount of tax authorized to be levied for the fine and forfeiture fund by levying a tax for outstanding county indebtedness with the intention of transferring funds from the outstanding indebtedness fund into the fine and forfeiture fund.

If for any reason the fine and forfeiture fund is not self-sustaining and at the end of any fiscal year there remained any indebtedness against such fund, which was not paid with the current taxes and the proceeds of fines and forfeitures, such remaining unpaid balance would constitute an outstanding county indebtedness and would then properly go into the amount of outstanding county indebtedness for the next year and special taxes could be levied to pay such outstanding indebtedness.

You will understand that in answering your question, this is not an official opinion in the matter as the Attorney General's office is not authorized to give official opinions to county officers relative to matters of the character stated above.

Trusting the above is the information which you desire, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS' FEES—CANNOT BE FIXED BY LOCAL LAWS

July 22, 1927.

Dear Sir:

I have your letter of July 20th relative to fees of the County Judge and Prosecuting Attorney of St. Lucie County, Florida.

You are no doubt aware of the constitutional provision that prohibits the passage of special or local laws fixing the fees or salaries of any class of officers except municipal officers.

I have not studied the particular bill which was passed at the 1927 session of the Legislature relative to the salary of the County Judge of St. Lucie county. The holding in the Watkins case, referred to in your letter, was, that under the terms of the law there under consideration an attempt was made to fix the salary of officers by a local or special statute, and therefore that the law was unconstitutional because it may be classified as applying only to one county—the County of Duval.

If the recent law under which your County Judge was allowed his increase in salary and a \$2.00 docket fee, is an act which refers to St. Lucie county by name there is no doubt in my mind but that such bill is clearly unconstitutional under Section 20 of Article 3 of the Constitution which prohibits the passage of local laws regulating the fees of officers of the State and county. On this point see also *State vs. Shepard*, 93 So. 667. On the other hand, if this law is so framed as to classify St. Lucie county by population without naming it, it might be upheld as a general law, even though St. Lucie county alone fell within the purview of the classification named in the Act.

Trusting the above will give you the information desired, and with kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

BOND—EFFECT OF CONDITIONAL PARDON ON.

Dear Sir:

December 1, 1927.

A conditional pardon, as long as the condition is not violated and the pardon revoked, operates as a complete bar to all proceedings under the original sentence of the Court, including proceedings against any bondsman who may have become liable in regard to the sentence for which conditional pardon was granted.

Where a 90-day period is given for the payment of fine and costs in a case and before such bond has become in default a conditional pardon is granted to the prisoner in the case, such conditional pardon operates, in my opinion, as a complete bar to the collection of the bond as the obligation of the sureties on the bond can be no greater than that of the original principal, who has been relieved by competent authority from the payment of the fine imposed upon him by virtue of the granting of the conditional pardon.

A pardon operates to wipe out not only conviction for an offense but even guilt, for the offense itself. The fact that it is a conditional pardon does not destroy its effectiveness as a pardon as long as the condition is not broken. There are many cases on record where conditional pardons have been granted to defendants in order to release bondsmen on 90-day bonds from the payment of the bond under particular conditions.

Trusting this answers your letter of November 29th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS PROHIBITED FROM CONTRACTING WITH COUNTY.

Dear Sir:

December 3, 1927.

Replying to your letter of recent date, it appears that whatever law on

the subject exists is covered by Section 5337 of the Revised General Statutes of Florida, which prohibits any officer of this State from bidding, entering into or being in any way interested in a contract for the working of any public road or street, etc., or for the performance of any other public work, in which said officer was a party to the letting.

The Supreme Court in the case of *Lainhart vs. Burr* held that this section only applied to contracts entered into by the Board of County Commissioners for work on the public roads or for the performance of any other work to which the officer was a party to the letting. Unless the work to be done by the County Commission you have in mind amounts to the performance of some contract for the working of the road, etc., which is required to be let by the County Commissioners, it does not appear to me that this Section would prohibit a County Commissioner from being paid his wages as a laborer as distinguished from the performance of a contract. The matter in question is a delicate one dependent upon the circumstances and while no positive law appears to be violated by the County Commissioner, who is serving as a day laborer and also as County Commissioner such an arrangement undoubtedly leaves such commissioner open to criticism as violating the spirit of the Section above referred to, although I think clearly he is not violating the letter of it.

Cordially yours,

FRED H. DAVIS, Attorney General.

JAIL—ERECTION—PAYMENT.

December 28, 1927.

Gentlemen:

Sections 1556 and 1557, Revised General Statutes, govern the levy of taxes and the making of contracts for building jails.

You will observe that Section 1556 authorizes the levy of a special tax not exceeding 5 mills per annum for five consecutive years.

I am of the opinion that there is nothing unlawful in the County Commissioners making a contract under Section 1557 for the erection of a jail and providing for the payment of the contract price by turning over to the contractors the proceeds of the taxes levied under Section 1556 as fast as same are collected each year for the five years contemplated.

The statute seems to contemplate that some such procedure as this shall be carried out in that it requires a contract to be filed in the office of the Clerk of the Circuit Court and also states a number of years for which taxes for the jail purposes can be levied.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR—WHEN AUTHORIZED TO ASSESS PROPERTY AS UNKNOWN

February 6, 1928.

Dear Sir:

I have your request of January 28th, asking my opinion as to the proper legal way in which taxes should be assessed against persons who do not make return for their taxes as required by law.

The Supreme Court of the State has held that in the absence of a return

for taxation it is mandatory on the tax assessor to assess the property as "Unknown," and if he fails to do so the tax assessment is *void*, unless the tax assessor at his peril indicates the proper owner of the land. Accordingly, as a matter of safety tax assessors should assess all lands as "Unknown" where no return is made.

For the purpose of identification I can see no legal objection to assessing lands as "Unknown" and indicating on the margin of the tax roll in parenthesis the name of the supposed owner for identification *only*, and not as a part of the assessment. This would seem to meet the situation to which you refer in your letter and might properly be adopted for convenience.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

JUSTICE OF PEACE—DISTRICTS

Dear Sir:

April 11, 1928.

The Constitution requires that each county shall be divided into not less than two (2) Justice of the Peace Districts. See Section 21, Article V, Constitution of Florida.

This appears to have been done in Lafayette county.

Section 3359, Revised General Statutes, provides for the attachment of certain territory to an existing Justice of the Peace district where no Justice of the Peace has been elected, qualified or commissioned for a portion of the territory attached.

This was intended to meet a temporary situation and would not authorize the permanent retention of only one Justice of the Peace in a county so as to give him county-wide jurisdiction as the Constitution requires that there must be at least two (2) Justices of the Peace districts permanently maintained.

I am of the opinion that the action of the Board of County Commissioners of Lafayette county as shown by their resolution adopted May 2nd, 1927, is a sufficient authority for the continuance of the territory of the 1st, 3rd, 4th and 5th Justice of the Peace Districts as a part of the territory of the 2nd district at least until the next general election, and that during the meantime the Justice of the Peace who presides over the 2nd district is entitled to such lawful fees as he may earn in any of the territory which is now a part of his district by virtue of the resolution referred to in your letter.

The County Commissioners should provide at least two (2) Justice of the Peace Districts for the county under Section 21 of Article V of the Constitution and submit such officers to be voted on in the next general election, which is in November, 1928. They may do this by permanently abolishing all Justice of the Peace districts except two (2) of the five (5) already existing.

Trusting this answers your inquiry of the 6th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

COUNTY ROAD AND BRIDGE FUND—DIVERTING FUNDS FOR COUNTY-WIDE BEAUTIFICATION PROGRAM

Dear Sir:

April 20, 1928.

I have your letter of April 13th, in which you requested my opinion as to whether or not the Board of County Commissioners of Lee county has author-

ity to carry out a county-wide beautification program by expenditures for same being paid out of the general road and bridge fund of the county, and without special legislative authority.

My answer is that such expenditure certainly could not be made unless the specific expenditures out of the road and bridge fund are provided for in the budget, and I seriously doubt the right of the County Commissioners to provide for same in the budget except with the express authority of the Legislature so to do.

The road and bridge district fund and taxes authorized therefor are authorized for the purpose of promoting transportation, and while I am in hearty accord with the beautification of the highways as far as the same can be accomplished, I am unable to see how same can be sustained as a legal proposition unless expressly authorized.

I might add that such seems to be the general view, as numerous acts have been passed by the Legislature to give such authority to particular counties.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

COUNTY PROSECUTING ATTORNEY—TERM OF OFFICE

August 8, 1928.

Dear Sir:

I have your inquiry of the 6th instant.

Section 18 of Article V of the Florida Constitution contains the following provision:

The county judge shall be the judge of said court. There shall be elected by the qualified electors of said county, at the time when the said judge is elected, a prosecuting attorney for said county, who shall hold office for four years.

It will be observed under the above section that the intent is expressed that the county prosecuting attorney shall have a term of office which corresponds to that of the county judge. It, therefore, seems to me that since the Supreme Court has held that the county judge's term of office in Martin county expires on the first Tuesday after the first Monday in January, the office of county prosecuting attorney would expire at the same time; or to express it differently, since the county prosecuting attorney is to be elected at the time when the judge is to be elected under the above section of the Constitution and since the Supreme Court has held that the judge must be elected in November, it appears that there will also have to be a county prosecuting attorney elected at the same time in order to comply with Section 18 of Article V.

Trusting this comment will be of value to you, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—COUNTY COMMISSIONERS.

August 17, 1928.

Dear Sir:

I have read with interest your letter of August 13th, in which you state that there were three candidates for the office of County Commissioner in

District No. 3, Hendry County, Florida, at the last Primary Election, as the result of which one of the candidates received 100 first choice votes and the other two candidates received 80 first choice votes each; which renders it impossible to count the second choice votes for either, in accordance with Section 354, Revised General Statutes of Florida.

Section 354 apparently undertakes to lay down the exclusive method by which it shall be determined who is nominated in all cases in which there is second choice voting.

The situation presented by the above set of facts is not covered by Section 354. It would, therefore, appear that all the candidates may be considered as having in effect received a tie vote for the office of County Commissioner inasmuch as neither one of them has been legally defeated and each of them is legally a candidate.

If Section 362, Revised General Statutes, can be given its apparent full scope and effect, the General Election Law of the State is applicable to all situations which are not covered by express provisions of the Primary Law.

Among the provisions of the General Election Law is found Section 291, which provides that:

In case two or more persons shall receive an equal and the highest number of votes for the same office, another election therefor shall be held upon the order of the Governor as in other cases of special elections.

If Section 362 is considered as being broad enough to make Section 291 applicable to Primary Elections a tie can be determined by having the Governor call a special Primary Election in County Commissioner's District No. 3, at which election shall be determined who is the nominee for County Commissioner of that district, all three candidates being considered as candidates in such special election.

If no such special election is called and held by order of the Governor, then it appears that there has been no nomination of County Commissioner in District No. 3 and, therefore, the names of all three candidates in the Primary may be put upon the General Election ballot by the required petition, as well as the names of other candidates who may choose to enter the race in addition to these gentlemen. If there is no nomination, anyone can run by getting his name printed on the General Election ballot by petition.

The only way there can be a nomination made is apparently by having a special election called under Section 291 on the theory that Section 291, construed in connection with Section 362, authorizes that course of action.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONER—WHEN OFFICE DEEMED VACANT; EXPENDITURE OF FUNDS.

September 10, 1928.

Dear Sir:

Section 396, Revised General Statutes of Florida, apparently covers the case of the County Commissioner who has moved from his district into another County Commissioner's district and maintains his residence in such other district.

You will notice that the statute declares the office vacant when the officer ceases to be an inhabitant of the district for which he shall have been elected or appointed.

Answering your second question, I think the intention of the law is that the Board of County Commissioners shall act as a board and that no individual member thereof has any personal or official individual right to control the expenditure of county funds or the management of any of the county property.

I suggest that you read the case of *Kirkland vs. State*, 86 Fla. 64; 97 So. 502, which discusses this subject.

Of course, there is nothing in the statute which prevents the Board of County Commissioners from appointing each member of the board as a committee of one to recommend the expenditure of moneys in his own individual district but nevertheless the expenditure of such moneys is within the control of the board as a whole and the board has no right to delegate it to a particular member. Neither has any board member the right to demand as of right the apportionment of any part of the road and bridge fund for his district to be expended only in that district, although the board should not purposely discriminate against any commissioner's district in withholding from such district arbitrarily a fair portion of the moneys required to be spent therein. For the County Commissioners to do so arbitrarily and designedly for the purpose of discrimination might constitute a breach of performance of their official duties.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR'S FEES

October 19, 1928.

Gentlemen:

I beg to acknowledge the receipt of your letter of October 3rd.

As I construe Section 769, Revised General Statutes, the tax assessor is required to enter valuations on the tax rolls of all lands certified to him by the State Comptroller as having been sold to the State for taxes.

While the statute provides that the *amount* of taxes on the land shall not be extended on the roll yet the requirement of the law is that they shall be given a valuation in like manner and under the same condition as if they were still the property of a private owner.

Furthermore, the taxes levied upon the valuations made against such land for the different years are required to be collected just as if same had never been certified to the State.

Even though land has been sold to the State for non-payment of taxes, it is still the property of the individual owner thereof, subject to redemption, and under the Constitution there should be a just valuation of such land for subsequent years just as if it never had been sold to the State.

I think, therefore, that a tax assessor must be deemed to be making an assessment of these lands when he is required to enter a valuation of the same on the tax rolls even though he does not extend the *amount* of the taxes against the land, and accordingly, I think he is entitled to commissions for the making of such assessment.

I might add that this interpretation has been put upon the law in the past and in other counties of the State, so I am informed.

Very truly yours,

FRED H. DAVIS, Attorney General.

PRISONERS—PERFORMANCE OF MANUAL LABOR.

Dear Sir:

October 12, 1928.

The matter referred to in your letter of October 6th appears to be covered by Section 6113, Revised General Statutes, which provides that when punishment by imprisonment is inflicted against any convict, the Court may also sentence the prisoner to be employed at hard labor and in such case he may be employed at such manual labor as the County Commissioners may direct.

Under that section the prisoner should be delivered to the prison farm in order that the sentence of the court may be executed by confining the prisoner at hard labor as directed by the Court, and the fact that the sentence is only for one day does not alter this rule.

I am assuming that the County Commissioners of St. Johns county have made appropriate provision for the compliance with the statute, directing the kind of manual labor at which the convicts in the county jail should be employed.

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION BALLOTS—NAMES TO APPEAR ON

October 20, 1928.

Dear Sir:

Replying to your letter of the 19th inst., relative to the inquiry as to who is entitled to have their name printed on the general election ballot, permit me to advise that Section 256, Revised General Statutes, as amended by Chapter 10038, Acts of 1927, makes it the duty of the Board of County Commissioners in the preparation of the ballots to be used in the respective counties, in addition to the nominees certified to them to print on said ballots, the name or names of any qualified elector who has not participated as a voter or candidate in a convention or primary election of a political party furnishing a nominee.

This statute has been recently passed upon and construed by our Supreme Court in the case of *State ex rel. Moore vs. Clark et al.*, in which the Court held that any qualified elector who did not participate as a voter or candidate in a convention or primary election of a political party furnishing a candidate is entitled to have his name printed on the ballot to be used at the general election.

It is seen, therefore, that this does not exclude those who did not vote in the last primary election even though they were active in the campaign prior to such primary provided they did not participate in a convention of some political party furnishing a nominee.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

BONDS—ISSUE—DIVERTING OF FUNDS PROHIBITED

December 7, 1928.

Dear Sir:

When a bond issue has been voted by a county and money has been raised by such issue for a specified purpose, it is unlawful for such money to be

spent for any other purpose except that for which it was specifically raised. I am therefore of the opinion that money derived from bonds which you have on hand and which was raised for the purpose of carrying out a particular purpose cannot be diverted or spent on any other project except that for which it was voted, except of course unless the Legislature should pass a local bill directly applicable to your county, in which case I think probably the expenditure would be legal.

Trusting this answers your inquiry and with kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

CRIMINAL CASES—COSTS.

December 30, 1927.

Dear Sir:

I am in receipt of a letter from Mr. C. S. Green, attorney of Palatka, Florida, asking that I give you my opinion as to the propriety of the Board of County Commissioners paying costs in criminal cases that have come before the county judge and the various justices of the peace of Putnam county, particularly in cases where warrants have been taken out for prisoners charged with crime and a bond for costs given by the prosecutor as required by the statute, but which bond is not collected by the county.

I am of the opinion that there is nothing in the laws of Florida which would authorize the Board of County Commissioners to refuse to pay a proper legal cost bill on the ground that it has not collected the bond given under Section 6176, R. G. S., to secure the costs in the case of a discharge of a defendant.

In the case of *Simmons vs. State*, 71 Fla. 340, the Supreme Court held that the provisions of Section 6176, Revised General Statutes, requiring payment in advance for security for costs of process, etc., by the party applying for a warrant or an affidavit of insolvency in lieu thereof did not apply to crimes of a public nature.

It appears that Section 6176 is limited in its application to cases in which private prosecutors institute criminal prosecution against others for violations of some personal or property right, the violation of which has caused the prosecutor injury.

It has no application to criminal prosecutions started by officers of the law, who procure warrants for offenders arrested by them in the performance of their public duty and even in those cases to which Section 6176 applies the statutes of Florida contemplate the payment of fees by the several counties to county officers for their services in executing the criminal laws.

In cases where convictions are had the fees are in turn taxed against the defendants convicted and in that way the county becomes reimbursed for the amount of such fees incurred.

In cases where the defendant is found "Not Guilty" or discharged a county becomes liable for the amount of such fees to the officers entitled to same, which fees are to be paid out of the fine and forfeiture fund of the county.

In cases falling under Section 6176, Revised General Statutes, where bonds were taken by magistrates upon the issuance of process for the accused, the county may reimburse itself for the amount of the fees paid out

on account of prosecutions which are terminated in verdicts of "Not Guilty" by itself bringing action upon the bonds or securities taken under Section 6176.

It, therefore, appears to me that whenever a criminal case has been duly instituted in the courts of the county that the county becomes primarily liable to the officer for the legally authorized amount of fees incurred in the conduct of the prosecution, regardless of whether such prosecution results in a conviction or acquittal.

If the officers of the county having authority to issue warrants for the arrest of persons charged with crime improperly exercise such power and authorize the issuance of warrants for persons under circumstances where there could be no possible chance of conviction or where they authorize the institution of cases in their courts for the purpose of obtaining costs, regardless of the merits of the case, the proper remedy for such acts is to report the matter to the Governor, who is authorized to suspend the officers for malfeasance in office or for incompetency, as the case might be; but unless malfeasance or incompetence can be established on the part of the officer he is entitled to rely upon his legal right to receive his just fees for his services without being embarrassed by the fact of whether or not a particular case has resulted in acquittal or conviction.

I might add that these views are in accordance with opinions rendered by former Attorney General Thos. F. West, reported in his biennial report for the years 1913-1914, and also in keeping with the holdings of the U. S. Supreme Court in recent cases from the State of Ohio, in which the Supreme Court of the United States held that any State law, which made the right of the judicial officers' claim to compensation depend upon the outcome of the case, brought to trial or hearing before them, to be unconstitutional.

Trusting this answers the inquiry of Mr. C. S. Green, dated December 19th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY ROADS—REGULATION OF TRAFFIC.

Dear Sir:

December 28, 1928.

Answering your letter of December 19th, I beg to state that it is my opinion that the County Commissioners have ample authority by injunction or otherwise to prevent the use of such heavy vehicles over the roads in their county which roads are being destroyed by extraordinarily heavy traffic such as the running of eight to 15-ton trucks over the roads.

Trusting this answers your inquiry, and wishing you the compliments of the season, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS PROHIBITED FROM GIVING AWAY COUNTY PROPERTY.

Dear Sir:

December 24th, 1928.

Your letter of December 19th came to my office while I was out of the city and I am answering the same at the first opportunity I have had since my return.

I do not think it would be proper for the County Commissioners to give away anything which belongs to the county but I see no legal objection to the sale of property by the commissioners at such price as they deem a fair price.

I think they could sell the tool shed you mentioned but could not give it away. In fact, the Supreme Court expressly held this in the case of *Kirkland vs. State*, where it was shown that a County Commissioner had charge of some of the county mules, which he failed to turn into the county after he ceased to be a County Commissioner, although he proved that the other commissioners agreed that he should keep the mules. The Supreme Court held this to be a penitentiary offense.

As to the transaction of business, the County Commissioners have the right to transact business up to and including January 7th, 1928.

Trusting this answers your inquiry, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY SUPERINTENDENTS OF PUBLIC INSTRUCTION
SPECIAL TAX SCHOOL DISTRICT FUNDS—PAYMENT OF TUITION
FROM NOT AUTHORIZED

October 11, 1927.

Dear Sir:

I have your letter of October 11th, again referring to the matter of the use of school funds of a special tax school district, that is to say, your inquiry is whether the funds of one special tax school district can be used in paying tuition for high school going from that particular special district to and attending school in another special tax district.

In my opinion, this cannot be done legally.

It has been my impression that high schools are supported by the county. If I am correct in this, then they are county-wide and may be attended by high school pupils from any part of the county regardless of the boundaries of such district. If I am correct in my understanding as to the operation of high schools, i. e., that they are operated by county funds, then in my opinion tuition could not be charged or collected from pupils from any part of the county regardless of the territorial limits of the districts in which such school happens to be located.

If I am in error as to the manner of operating high schools and the law applicable thereto, it does not change the law, which says that funds raised by taxation for special tax school districts can be expended only for the support and maintenance of the public free schools in the district in which such funds are raised by taxation.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

HIGH SCHOOL PUPILS, NON-RESIDENT—TUITION REQUIRED

December 12, 1927.

Dear Sir:

Replying to your letter of December 9th, I will state that Section 577 of the Revised General Statutes covers the situation mentioned in your letter.

This section is No. 208, found on page 69 of the Compilation of School Laws hereto attached.

Under this section if the high school at Leesburg is situated in and maintained by a special tax school district, children from other special tax school districts may be required to have their tuition paid as a condition precedent to their attendance at such Leesburg high school.

While the statutes are not clear on the subject, it does not appear that there is any legal objection to payments being made by a special tax school district which has no sufficient high school to another district, which does have such a high school in order to have the children of the district in which no high school is maintained properly taken care of.

I am of the opinion that you can legally pay tuition from other district funds to the Leesburg high school district to cover cost of tuition of pupils from these other districts in the event that trustees of such other districts agree to same and the plan is approved by the Board of Public Instruction of the county.

Very truly yours,

FRED H. DAVIS, Attorney General.

PRINCIPALS OF SCHOOLS—SALARY.

January 6, 1928.

Dear Madam:

Section 529 of the Revised General Statutes of Florida, requiring certain things to be done before school teachers can be paid their salaries appears to be applicable to the payment of salary of principals of schools as well as teachers.

The principal is only a teacher, insofar as the law is concerned, although he may be placed in a position of authority over other teachers.

The only way that I know of that a school board can legally pay a principal a whole year's salary when the school is in session on a nine months' basis is to make the salary of the principal for the nine months large enough to meet whatever the school board would allow him for the entire year. In the event such a contract was entered into the principal's time would belong to the school board for the other three months and they could have him do such work as they elected in that period.

Trusting this answers your letter of January 5th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

SCHOOL BOARD—PREREQUISITE FOR BORROWING MONEY.

January 8, 1928.

Dear Sir:

Section 458 of the Revised General Statutes authorizes the school board to borrow 80 percent of the amount estimated as necessary for the maintenance of the common schools for the next ensuing year.

Under the provisions of this section it is unlawful for the school board to borrow any more money after borrowing the above mentioned 80 percent until the entire loan has been repaid.

The provisos mentioned in the Act have reference to the outstanding debts of the county existing at the time Section 458 was enacted and not current indebtedness contracted under Section 458. The words "or to become due"

used in the first proviso of this section refer to debts existing at the time the law was passed but which were not then due to be paid, such as long term time warrants, etc.

The purpose of the provisos is to authorize the County Board of Public Instruction to borrow money under the Act without reference to payment or provision for payment of any indebtedness existing at the time the Act was passed. It is, therefore, my opinion that the Board of Public Instruction of Calhoun county will have to pay back the 80 percent borrowed by it under the Act in full before they will be authorized to borrow any more money.

Trusting this answers your letter of January 5th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

SUPERINTENDENTS OF PUBLIC INSTRUCTION—QUALIFICATIONS.

January 24, 1928.

Dear Sir:

The statutes of Florida make no special provision relative to the educational qualifications of persons who may be elected to the position of County Superintendent of Public Instruction.

Attempts have been made to procure the passage of laws requiring that such County Superintendents be certificated teachers but no laws have so far been enacted, although it would seem that some regulation of this subject is essential.

I might add that some years ago I have a recollection of a man in one of the rural counties of this State being elected to this position who himself could not read or write and who had eight children who had never been to school because of the lack of any law requiring any special qualifications.

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICT BONDS—IF CHAPTER 11855 APPLICABLE

Dear Sir:

February 16, 1928.

I have your letter of February 8th, asking as to whether Chapter 11855, Acts of 1927, providing for refunding bonds, is applicable to special tax school district bonds.

In reply to your inquiry attention is invited to the provisions of Senate Joint Resolution No. 333, adopted by the Legislature of 1923 and ratified by the people, by which Section 17 of Article XII of the Constitution has been amended, laying down the specific manner and purpose for which special tax school district bonds may now be issued.

It would appear that in view of the provisions of the Constitution on the subject that bonds could be issued in no other manner than in accordance with the regulations laid down in the amendment to the Constitution insofar as special tax school district bonds are concerned. It would, therefore, appear that Chapter 11855, Acts of 1927, cannot apply to special tax district bonds.

You failed to state whether your bonds were issued prior to November, 1924, or after that date. It may be that as to special tax school district bonds issued prior to November, 1924, a different rule will prevail. As to this it is not necessary to express an opinion at this time.

You will understand that in answering your inquiry, my reply is necessarily limited by my lack of information as to the details of the outstanding bonds.

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—OBLIGATION AS TO BONDED
INDEBTEDNESS.

May 29, 1928.

Dear Sir:

I answer your inquiry of May 19th as follows:

1. Where a Special Tax School District is created by Act of the Legislature out of territory already in a bonded Special Tax School District the newly created district not only can assume but must assume its pro rata share of the bonded indebtedness.

2. Where a newly created Special Tax School District contains a school building and ground paid for out of the bonded indebtedness of the original Special Tax School District, the obligations of the district with reference to each other may be prorated by having the new district pay the old district as its part of the bonded indebtedness the value of school buildings and grounds which it acquires from the old district.

This should be settled by suit in equity, brought by one district against the other, asking the Court to ascertain the amount and decree what should be paid.

3. If a Special Tax School District can operate its schools out of the proceeds of its 10-mill district levy without the aid of any appropriation on the part of the county school fund of general State and county school funds there is nevertheless no authority for the County School Board to refuse to make an appropriation out of the general county school fund of a reasonable amount of the general county funds, which should be apportioned to the said Special Tax School Districts.

Special Tax School Districts are created for the purpose of supplementing and adding to the ordinary school funds available to the County School Board and should not be so administered so as to throw the entire burden of running the schools of the entire Special Tax School Districts upon the districts while at the same time requiring them to pay their share of the general county school taxes.

Paragraph 13 of Section 454, Revised General Statutes, contemplates that the Board of Public Instruction shall on or before the last Monday in June of each year fix the itemized estimate showing the amount of money required for the maintenance of the necessary common schools of their county for the next ensuing scholastic year, etc., which means that they should prepare a budget, apportioning the general county funds upon some equitable basis, to be adopted by them and provided for in said budget.

There is no rule of law as to the basis upon which the appropriation shall be estimated. This is committed to the judgment of the County School Board.

4. The Supreme Court has decided that under the Constitution of this

State municipalities cannot be lawfully authorized to appropriate or spend any moneys for educational purposes.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SCHOOL TEACHERS—QUALIFICATIONS

July 2, 1928.

Dear Sir:

I beg to acknowledge receipt of your valued favor of June 28th.

The construction I place upon Section 569, Revised General Statutes (Sec. 199, School Code), is that no person shall be nominated for teacher who does not hold a certificate, nor shall any person be nominated for teacher who holds a certificate which will expire before the term of school ends for which the teacher is appointed.

I do not think it is lawful under this section for the Board of Trustees to nominate a teacher except one who possesses the qualifications fixed by law.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICT FUND—COUNTY BOARD PUBLIC INSTRUCTION NOT AUTHORIZED TO BORROW

August 25, 1928.

Dear Sir:

Pursuant to your request for my opinion on the subject, I beg to advise that I am of the opinion that it will be unlawful for the Board of Public Instruction of the county to borrow funds from the interest and sinking fund of special tax school districts in the county.

The sinking fund in question is a trust fund, which must be preserved intact under all circumstances.

The law permits investment of the sinking fund and the manner of investment is specifically laid down by law. See Section 594, Revised General Statutes; Section 736, Compiled Statutes, 1927.

Very truly yours,

FRED H. DAVIS, Attorney General.

SCHOOL—CHILDREN MAY ATTEND IN ADJOINING COUNTY UNDER AGREEMENT

September 10, 1928.

Dear Sir:

Under Section 437, Revised General Statutes, when it is more convenient for children residing in one county to attend school in an adjoining county for same to do so by an agreement of Superintendents of Public Instruction of the two counties involved.

When such an agreement is made, the superintendents should include in the agreement what amount of money one school board shall pay to the other as a consideration for permitting the authorized attendance of the children residing in one county in the schools located in another county.

Unless the superintendents of the two counties can agree on the matter

and can agree as to the amount to be paid—if any—the school authorities of one county have the right to refuse to permit children from the other county to attend the schools of such county.

Answering your second question, it appears that the pro rata share to be paid for the attendance is to be arrived at by the agreement of the two county superintendents. There is no special rule laid down for determining what the amount shall be. The law apparently recognizes the fact that so many factors may enter into this proposition as to make it impossible to lay down any set rule.

For example, in one case two county superintendents may agree that the conditions are such that owing to geographical lines about as many children of one county will attend the schools of the other county as to make practically an equal exchange of pupils; in which event the superintendents could well agree that the pupils would be received from the adjoining county without any compensation being paid at all.

Trusting this answers your inquiry of the 6th instant, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TIME WARRANTS—BOARD PUBLIC INSTRUCTION NOT AUTHORIZED TO ISSUE.

October 2, 1928.

Dear Sir:

The Supreme Court of the State of Florida has recently held that a County Board of Public Instruction has no authority to borrow money and issue bonds and other similar evidence of indebtedness to pay outstanding indebtedness.

The holding of the Court is that current school funds are required to be used currently for carrying on the schools during the current term. The case is that of Barrow vs. Moffett, 116 So. 71.

Time warrants have been held by the Supreme Court to be in effect bonds. See Leonard vs. Franklin, 84 Fla. 402.

Construing these opinions of the Supreme Court together, I do not think the Board of Public Instruction of Columbia county has authority to legally issue the \$45,000 of time warrants mentioned to liquidate past indebtedness.

This is in answer to your letter of the 17th ultimo.

Very truly yours,

FRED H. DAVIS, Attorney General.

SCHOOLS—CHILDREN OUTSIDE OF DISTRICT MAY ATTEND UNDER CERTAIN CONDITIONS.

October 15, 1928.

Dear Sir:

As I construe Section 577, Revised General Statutes, the purpose is to prohibit attendance by children on the schools of any Special Tax School District unless the children live in such school district subject to the exception that if the trustees of the particular school districts are willing that such trustees may make an arrangement with the school trustees of the adjoining county to receive pupils of such county in the schools of the adjoining county, on condition that the county shall pay to the adjoining county a pro rata share of money for such attendance.

The amount of the share is to be estimated by the trustees of the district permitting the attendance outside of the county.

I think your interpretation of the law in regard to the manner of arriving at the amount of payment of the required pro rata share is correct.

Very truly yours,

FRED H. DAVIS, Attorney General.

SCHOOL DISTRICTS—CONSOLIDATION OF.

October 15, 1928.

Dear Sir:

Consolidation of school districts is governed by Section 748, Compiled Statutes, 1927.

This statute provides that there must be a majority vote in each district proposed to be consolidated or the whole election fails.

I am, therefore, of the opinion that the three districts mentioned in your letter of the 10th which voted favorably toward consolidation cannot be considered as having been consolidated in view of the fact that one district included in the election voted against the consolidation.

However, a new election may be held, embracing these three districts only and if they vote to consolidate such procedure will be legal.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY DEPOSITORIES—INTEREST ON DAILY BALANCES.

October 18, 1928.

Dear Sir:

In compliance with your inquiry of October 5th, I beg to advise that I construe Section 2405, Compiled Laws of 1927 (Section 1560, Revised General Statutes) as follows:

That banks are required to pay, as the statute says, 2 percent per annum on all daily balances when such funds exceed \$2,000, which means that if there are \$2,001 in the bank on a particular day, the bank pays interest on that sum for that day. For any day that the balance merely equals \$2,000 or falls below that sum the bank pays no interest whatever on the deposit for that day.

I find nothing in the statute which authorizes the calculation to be made upon an average daily balance.

The obvious purpose of the statute was to encourage the keeping of more than \$2,000 in the bank at all times in order to earn interest on the deposit. I find nothing in the statute which authorizes a construction to the effect that under no circumstances is the county entitled to interest except on the amount of money on deposit in excess of \$2,000. Had the statute meant this it would have said so.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SCHOOL BOARDS—CERTIFICATES OF INDEBTEDNESS

November 14, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of November 10th, requesting that I prepare a form of certificate of indebtedness to be given to teachers employed in schools located in districts where the trustees or school board cannot borrow money under the law.

In my opinion, there is no form of certificate which could be prepared which would be legal and suitable for such purpose.

The Constitution and laws of the State contemplate that the school authorities shall prepare and follow a budget and not exceed that budget in a given year. While the board is authorized to borrow a certain percentage of its anticipated revenue, as provided in Section 458, Revised General Statutes, it must pursue the terms and requirements of that statute in borrowing money.

There is, of course, no reason why your board cannot issue to school teachers a certificate showing that they have earned a certain amount of compensation, which would be payable to them when the tax money is realized for payment.

However, there is no bank or other person which would be willing to advance the cash on such a certificate, of which I am aware.

The Supreme Court has held very recently that a county school board could not borrow money to pay up its outstanding indebtedness nor could it use the revenue of one year to pay up debts incurred in a previous year. See *Barrow vs. Moffett*, 116 So. 71.

The effect of this ruling is to require school boards not to exceed their budgets or available revenues during a given year, and to render them powerless to pay indebtedness incurred if they violate this rule. Accordingly, every avenue of credit which was formerly open to school authorities is now closed by this decision.

The situation in which you find yourself is indeed regrettable, but I see no relief for it under present provisions of statutes and court decisions unless the board can arrange to pay back the money borrowed and arrange a new loan under Section 458.

If there is any way in which I can assist you in working this problem out along any other course of procedure which may occur to you, please communicate with me.

Very truly yours,

FRED H. DAVIS, Attorney General.

SPECIAL TAX SCHOOL DISTRICTS—INVESTMENT OF SINKING FUND

December 1, 1928.

Dear Sir:

I have your letter of November 26th, in reference to approval of the investment of a portion of the sinking fund of Special Tax School District No. 2 by purchasing certain tax anticipation notes of Okeechobee county.

I have always held to the view and have rendered several opinions already to the effect that Section 594, Revised General Statutes, lays down the exclusive method for the investment of the sinking funds of special tax school districts.

If this is not the exclusive method for the investment of such funds, I am frank to say that I see no reason for having a statute on the subject at all.

Also, it would be a distinct pleasure for me to help the board out by approving this procedure if it were legally possible under the law, but, frankly, I cannot see how I can overlook or ignore the plain provisions of Section 594, Revised General Statutes, which appears to govern and control the situation referred to in your letter. "*Expressio unius est exclusio alterius.*"

Very truly yours,
FRED H. DAVIS, Attorney General.

CLERKS CIRCUIT COURT

CLERK CIRCUIT COURT—FEES FOR VALIDATION CERTIFICATE ON BONDS.

February 19, 1927.

Dear Sir:

Your favor of the 17th inst., with reference to fee to be charged by the Clerk of the Circuit Court for signing and sealing a validation certificate on bonds, has been received.

The statute requires that the county, municipality or taxing district shall have written or stamped on each bond the validating certificate. All the clerk is required to do is to sign his name and affix his seal. For this service the statute fixes the fee of 10 cents.

In my opinion that is the proper legal charge and if any Clerks of the Circuit Court are charging more than that they are charging more than the law authorizes.

Very truly yours,
J. B. JOHNSON, Attorney General.

MORTGAGES—CANCELLATION—SEPARATE BOOK FOR RECORDING SATISFACTION OF MORTGAGES.

March 23, 1927.

Dear Sir:

Your favor of the 17th inst., with reference to cancellation of mortgages, has been received.

It has been the custom pretty generally to cancel mortgages by entering cancellation on the margin of the record of the mortgage. The statute is not entirely plain on this.

Section 3777, Revised General Statutes, provides that satisfaction of mortgage shall be recorded in a separate book and not elsewhere. A mortgage cancelled on a margin of the record would be good in my opinion.

Very truly yours,
J. B. JOHNSON, Attorney General.

LIQUORS—CONFISCATION.

June 16, 1927.

Dear Sir:

Having before me your letter of June 10th, relative to the possession of confiscated liquor *pendente lite*:

I find that the subject matter is covered by Chapter 10217, Acts of 1925, Laws of Florida, which amend Sections 5481 and 5485 of the Revised Gen-

eral Statutes of Florida relative to seizure of liquors, property and keeping records of same.

Construing this law in connection with Section 5970 of the Revised General Statutes, which provides that the Clerk of the Criminal Court of Record of the county in which a criminal court has been established shall pay the custodian of the dockets, books and papers of the court and shall have the same powers, duties and obligations as are exercised by and imposed on Clerks of the Circuit Court. It would seem to me that a Clerk of a Criminal Court would be a proper custodian of seized liquors taken for use as a basis for criminal prosecution in the Criminal Court as much so as the Clerk of the Circuit Court.

I reach this conclusion by consideration of the fact that Chapter 10217 is an amendment to two sections of the Revised General Statutes and as the Revised General Statutes are to be construed together it would seem that Section 5970 has the effect of modifying the provisions of Section 5481 and 5485, as amended by Chapter 10217 and all those counties in which a Criminal Court of Record has been established.

You will understand that this opinion is not in any sense an official one, as the Attorney General is not authorized to pass on matters of this kind.

Trusting that this will be of some service to you, I am,

Sincerely yours,

FRED H. DAVIS, Attorney General.

CORPORATION LAW—EFFECT OF CHAPTER 11829, ACTS OF 1927, ON
CHAPTER 11997, ACTS OF 1927

October 15, 1927.

Dear Sir:

Answering your letter of October 6th, with reference to whether or not the general corporation law, Section 66, House Bill No. 776 (Chapter 11829, Acts of 1927) repeals provisions of Senate Bill No. 57 (Chapter 11997, Acts of 1927).

I beg to advise that I am of the opinion that Section 6 of House Bill No. 776 should be followed in entering defaults and decrees *pro confesso* against corporations upon process served against such corporations under House Bill No. 776.

If process is served under general law on process on corporations the provisions of Senate Bill No. 57 will govern.

I do not think that either bill operates as a repeal of the other, as both were passed at the same session of the Legislature, but that Section 6 of House Bill No. 776 should be construed as providing a special rule to govern those cases in which process is served by virtue of that Act and in all cases Senate Bill No. 57 applies.

However, you will notice that under House Bill No. 776, the defaults and decrees *pro confesso* may be entered either on the Rule Day or within twenty days thereafter. The entry, however, must be dated as of the Rule Day. There appears very little inconsistency between the two laws.

Trusting this makes the matter clear, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

FEES—APPLICATION OF CHAPTER 11893, ACTS OF 1927, RELATIVE TO
October 16, 1927.

Dear Sir:

I am of the opinion that House Bill No. 763, approved June 1, 1927, entitled: "An Act fixing the fees and compensation to be charged by the clerks of the various courts of record and the clerks of the circuit court, as recorder," does not in any-wise affect the fees allowed to be charged by Justices of the Peace in this State, even though Section 3384 of the Revised General Statutes provides that the fees of a Justice of the Peace shall be the same as those of the clerk of the circuit court for similar services.

My reasons for this conclusion are as follows:

Section 16 of Article III of the Constitution of Florida provides that each bill shall contain but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title. Legislative provisions not fairly covered by or implied in the title of an act are invalid and cannot be enforced. See *Davis vs. Wilson, etc., Co.*, 84 Fla. 102, 92 So. 916, where the Supreme Court held that an act whose title related to the preparation and filing of transcripts of the record in appeal cases did not legally affect a change in the fees of the clerk for his services in that respect, and that, therefore, the act insofar as it fixed such fees, was invalid.

In the case of House Bill 763, the title is restricted to that of fixing the fees of Clerks of Courts of Record and of Circuit Courts. In this connection it will be also noted that such Act is not a direct amendment of any specifically named section in the Revised General Statutes, but is rather a repeal of Section 3084 of the Revised General Statutes on the subject of fees for clerks of courts, and the substitution of a new and independent fee bill for such clerks, insofar as clerks are concerned. But the repeal of Section 3084 has only taken place insofar as it is necessary to give effect to House Bill 763, and except insofar as House Bill 763 conflicts with Section 3084, that section remains in force and in unrepealed. See Section 3 of House Bill 763, construed in connection with holding of the Supreme Court in case of *Sparkman v. State*, 71 Fla. 210, 71 So. 34.

I am, therefore, of the opinion that House Bill No. 763 must be construed in the light of its limited title, as operating to effect a change only in the fees of Clerks of Courts of Record and Circuit Court Clerks, and that except insofar as the original Section 3084, of the Revised General Statutes, fixing fees of such clerks, is repealed to allow House Bill No. 763 to operate, that original Section 3084 remains in full force as a law of this State and, therefore, continues to fix the scale of fees to be allowed to Justices of the Peace and County Judges. Any other construction of House Bill 763 would render that Act unconstitutional as no notice is given by the title of any intention to change the fees of Justices of the Peace or other officers than those specifically referred to therein.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

TAX SALE CERTIFICATES—REDEMPTION OF—RATE OF INTEREST
TO BE CHARGED.

Dear Sir:

October 31, 1927.

I have your request of October 28th for my opinion of the proper in-

terpretation of Section 778, Revised General Statutes of Florida, relating to redemption of tax sale certificates.

I am of the opinion that Section 778 should be read in connection with Section 775 of the Revised General Statutes. You will notice that in Section 775 it is provided that the rate of interest shall be 25 percentum for two years and 8 percentum per annum for the time after the first two years. It is obvious to me that the words:

* * * together with 8 percent thereon * * *

as used in Section 778, Revised General Statutes, means the same thing as the words:

* * * 8 percent per annum for the time after the first two years * * *

as used in Section 775.

Therefore, in calculating the 8 percent provided for in Section 778 you should figure the same, i.e., 8 percent per annum interest up to the date of redemption.

Trusting this gives you the information that you desire, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BOND ELECTION—POLL TAXES PREREQUISITE.

November 1, 1927.

Dear Sir:

Section 215 of the Revised General Statutes, as amended by Chapter 8583, Acts of 1921, in the sixth paragraph thereof provides that no person shall be permitted to vote at an election who shall have failed to pay at least on or before the fourth Saturday preceding the day of such election his or her poll taxes for the two years next preceding the year in which such election shall be held.

If your bond election is to be held on December 19th, 1927, the year 1927 is the year in which the election is to be held within the meaning of this law. Therefore, the requirement for payment of poll taxes means that poll taxes for the years 1925 and 1926, which are the two years next preceding the year in which the election is held.

Trusting this answers your letter of October 28th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONER PROHIBITED FROM CONTRACTING WITH MINOR SON FOR ROAD WORK.

November 4, 1927.

Dear Sir:

It is unlawful and contrary to both the letter and the spirit of the law of Florida for a member of the Board of County Commissioners to contract with his minor son to do road work for the county, of which he is commissioner and to rent mules belonging to him and used by the boy in the performance of the work so as to become entitled to a charge therefor.

As long as the boy is under 21 years of age and is living with his parents his father is entitled to the services of his son and payment made by

the county to a minor son under such circumstances would be equivalent to paying the father, to that extent.

Trusting this answers your inquiry to me under date of November 4th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

"FOR HIRE" CARS—CONTAINERS FOR REGISTRATION CERTIFICATE.

December 3, 1927.

Dear Sir:

Chapter 10182. Acts of 1925, Laws of Florida, provides a fee of 50 cents for the containers which are required to be furnished with certificates of registration issued to owners of "For Hire" cars.

You will notice that the law requires that such containers be furnished when the vehicle is *first* registered and that the law further provides that the certificate of registration shall be placed in the container which has been furnished therewith or *heretofore* furnished. This plainly indicates that a person is not required to secure a container every year if he already has a suitable container which was furnished him when the vehicle was first registered.

Of course, if he has lost the original container and wishes a new one he must secure one and pay 50 cents for same.

Trusting this answers your letter of December 2nd, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

LANDS—ASSESSMENT OF—PROCEDURE NECESSARY.

December 24, 1927.

Dear Sir:

Referring to your letter of December 15th, which has been called to my attention since my return to Tallahassee, I beg to advise that where land has been sold and a mortgage taken thereon to secure an unpaid part of the purchase price the subsequent platting of such lands by the buyer is subordinate to the lien of the mortgage and in the event the mortgage is foreclosed it will have the effect of canceling out the plat unless, of course, the mortgage refers to the land by the printed description.

Where the above conditions do not exist the proper course of procedure for a man who has had his land platted into lots and blocks to pursue in order to get his lands taxed as acreage instead of on a lot-basis is to make a return to the tax assessor, describing the land according to his former description, in which event the tax assessor would have the right to accept such a return and put the land on his books for taxation purposes, describing it exactly as it is described in the return for taxation purposes. When no return is filed the assessor has no other alternative than to treat the ownership of lots as "unknown" and to treat each lot separately, if he follows out the law.

As to taxes which have already been assessed against lands on a lot and block basis, I know of no way in which these taxes can be remitted except by Act of the Legislature. In some instances suits have been filed in equity, asking for an injunction against the authorities to prevent the collection of taxes, claiming that the tax as assessed is unreasonable, arbitrary and un-

lawful, in which cases consent decrees have been entered by which a lesser amount than the assessed tax was agreed to be accepted and paid over in satisfaction of the taxes.

While the State and county officers can agree to compromise on a law suit which takes its form in the shape of a decree made by the Court, approving or allowing the compromise, there is no statutory or other authority for either the State or county taxing authorities to take less than the assessed amount of taxes placed against parcels of realty.

In many cases the taxing of land by lots and blocks really operates to make the taxes on a given parcel unreasonably out of proportion to the values put upon adjoining lands and allegation can well be truthfully made in an equity suit that such a condition results in an unlawful assessment and where such is done, so far as the city taxes are concerned, it has been the policy of the Comptroller to take the matter up with the County Tax Collector and where it has been made to appear that it is proper to accept a less amount than the assessed tax such amount has been agreed upon and a consent decree entered enjoining the collecting of anything greater than that, which decree operates to protect the Comptroller and the tax collector in their accounts with the State.

Trusting this gives you the information you request, and with kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOKS—WHEN REQUIRED TO BE KEPT OPEN
January 13, 1928.

Dear Sir:

In the absence of the Attorney General from the Capital your letter of the 9th inst. has come to the undersigned for attention.

I note your inquiry as to whether, under the law, it would be permissible for the Supervisor of Registration to open the registration books at the county seat for the registration of qualified electors or whether he must wait until the first Monday in March.

Section 307, Revised General Statutes, provides that the county registration books for each election district shall be opened on each week day from 9 A. M. to 2 P. M. and from 2 P. M. to 5 P. M., and open night each week until 9 P. M. at some convenient place in the election district in each county of the State from the first Monday in March to and including the first Monday in April of each year in which the general primary election is held.

Section 312 makes it the duty of the Supervisor of Registration of each county in the State between the first Monday in April and May first of each year in which the general primary election is held to keep the registration books of the county open at his office every day, Sundays excepted, from 9 o'clock A. M. to 12 o'clock M., and from 2 o'clock P. M. to 5 o'clock P. M. for the registration of voters for the general primary election.

This is the only provision for opening the registration books for the registration of voters except in those counties otherwise provided for by acts of the Legislature made specially applicable to counties of certain population.

It is, therefore, my opinion that there is no authority for opening the precinct registration books in your county unless, of course, your county falls

within the special classification of some statute subsequent to the Revised General Statutes.

I do not find any statutes making special provisions for registration in counties of the population of your county.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

COUNTY COMMISSIONER'S DISTRICTS—WHEN CHANGE EFFECTIVE.

January 24, 1928.

Dear Sir:

In my opinion Section 1472 of the Revised General Statutes of Florida, providing for change of County Commissioners' Districts, has the legal effect of requiring the districts to remain as they were before changed until the expiration of the term of the commissioners who shall be holding by election.

In other words, the County Commissioner's District can now be changed to take effect upon the beginning of a new term of office for the commissioners, but until the new term of office for the commissioners begins the old district lines and the rights, duties and privileges of the voters therein remain the same as if no change had ever been ordered.

It would seem, therefore, that the voters in the precinct in your county which has been changed from Commissioners' District No. 1 to District No. 2 will have to continue to vote for the commissioner to be nominated for District No. 1 until after the first Tuesday after the first Monday in January, 1929.

One of the purposes of this law was to prevent "gerrymandering" of district lines by County Commissioners for the procurement of political advantage, in securing re-election by the juggling of district lines prior to an election, and while I have not the slightest idea that such is the purpose for the change in your county, yet such is the purpose of the law to prevent, and that is one of the reasons that the law reads as it does.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS—UNLAWFUL TO MAKE PAYMENTS NOT AUTHORIZED BY BUDGET

February 3, 1928.

Dear Sir:

Sections 1524-30, inclusive, of the Revised General Statutes make it unlawful for the Board of County Commissioners of the county to make any payments of money other than those provided for in their budget pursuant to law.

Any violation of these sections in making such payments not only would be a personal misdemeanor for all the members of the board voting for it, but would lay each member of the board so offending liable to removal from office for malfeasance. The members of the board would likewise be liable for the repayment of this money, same to be collected out of their official bonds.

Trusting this answers your letter of February 2nd, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY LAW—TERM "ANNUAL SALARY OR COMPENSATION"

February 6, 1928.

Dear Sir:

Answering your letter of January 30th, requesting my opinion as to whether Sections 224 and 328 of the Primary Laws in their reference to "annual salary or compensation of the office sought" refer to net salary or gross salary, I beg to advise that in my opinion the net salary only is contemplated because the word "salary" and "compensation" imply that which a man receives in payment for services rendered.

It would be impossible for him to receive the gross receipts of any office, having expenditures connected with it, as salary or compensation.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

FEES, CLERK CIRCUIT COURT—IN CONNECTION WITH SEIZURE OF INTOXICANTS

February 6, 1928.

Dear Sir:

I have your request, communicated through Hon. Walter Macklin, as to the proper fees to which a Clerk of the Circuit Court is entitled for the administration of Section 5481, Revised General Statutes of Florida, relating to the seizure of intoxicating liquors and custody of the same.

Section 5481, as amended by Chapter 10217 Acts of 1925, provides that the sheriff, upon seizing any liquors or other things taken in connection therewith, shall deliver such articles into the custody of the Clerk of the Circuit Court of the county. The clerk is thereupon required to perform certain acts in connection with the reception and custody of the same.

As soon as the liquors are turned over to the clerk he should open a place on his docket and enter the case as "The State of Florida vs. Ten Quarts of Liquor," or whatever it might be. He should thereupon file the inventory turned over to him by the sheriff in connection with the liquors. He should also make and file his certificate in the cause that he has checked the inventory and found that the articles therein described have been delivered to him. He should also number serially and mark each item for identification and make a complete list and inventory by number and description of the items delivered to him by the sheriff in accordance with the statutes and deliver one copy thereof to the sheriff and deposit one copy in his files.

A general scale of fees might be stated as follows:

Filing inventory received from sheriff.....	\$.10
Docketing case on docket.....	.15
Indexing same .....	.20
Marking number on each article turned over to clerk, same as for filing papers, each article.....	.10
Making inventory by clerk—one copy for sheriff, one copy to be filed by clerk, same as for writing, based on number of words in inventory .....	....
Regular fee for certificate with seal, which must be attached to each copy based on first 100 words, 25 cents; each other 100 words .....	.12½
Seal .....	.25

Each separate thing required to be done by the clerk should be noted on the Progress Docket opened by him and for each such entry the clerk will charge the same fees as for entries for any ordinary case in the Progress Docket.

Trusting this will give you the information that you require in handling this subject, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

WITNESS' FEES—CIVIL AND CRIMINAL CASES.

February 11, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of February 8th, 1928, asking if there is any difference in the fees to be paid expert witnesses and ordinary witnesses, in both civil and criminal cases.

Section 2712, Revised General Statutes, reads as follows:

2712. (1512) Pay of Witnesses.—Witnesses in all cases, civil and criminal, in the circuit courts, county courts, criminal courts of record now or hereafter created, and witnesses summoned before any referee, arbitrator or master in chancery, shall receive for each day's actual attendance two dollars, and also five cents per mile for actual distance traveled to and from the courts; in courts of county judges and justices of the peace, one dollar per day and the same mileage as in the circuit court.

Section 6205, Revised General Statutes of 1920, reads, in part as follows:

The compensation allowed the physician attending coroner's inquests and making post mortem examination, ten dollars, to be paid by the county. The coroner and foreman of the inquest shall give their certificate stating the attendance of the physician, and upon its presentation to the county commissioners of the county, they shall order the same to be paid out of the fine and forfeiture fund.

Section 1 of Chapter 7830, Laws of Florida, Acts of 1919, as given in the Florida Cumulative Statutes of 1925, reads

The State Board of Health shall make or have made an analysis of any part of the contents of the human body submitted to it by a regular practicing physician licensed to practice in this State, or and State attorney or solicitor of any criminal court or court of record, or sheriff of this State, for the purpose of determining whether or not it contains any foreign matter or drugs poisonous to the human system, and upon the completion of such analysis furnish to the person submitting the same, a certificate under oath of the result of such analysis.

Section 2 of this Act reads (Sec. 2019-3, Cum. Stats.):

The State Board of Health shall make or have made analysis of any part of the contents of the carcass of any domestic animal submitted to it by any duly authorized agency of the live stock sanitary board, or county demonstration agent, or sheriff, for the purpose of determining whether or not it contains any foreign matter or drugs, poisonous to the life of such animal, and upon the completion of such analysis the said board shall furnish to the person submitting same a certificate under oath giving the result of such analysis;

provided that in all such cases when the agent submits any specimen to the State Board of Health for analysis he shall at the same time forward to the secretary of the board a fee of five dollars to be applied to the expense incident to such analysis, and the said fee shall become a part of the State Board of Health Funds and forwarded to the State Treasurer.

Section 3 of the Act reads:

Any person who is required under process of court to give expert testimony under either Section 2019 (2) and 2019 (3) shall be paid all expenses going to and from the place where such testimony is to be given.

The above three sections are copied from the Cumulative Statutes of 1925, Michie.

With the exceptions contained in Section 6205, Rev. General Statutes, 1920, and Chapter 7830, Acts of 1919, the compensation of witnesses in all civil and criminal cases is governed by the provisions of Section 2712, Revised General Statutes of Florida, 1920, which makes no distinction between expert and ordinary witnesses.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX CERTIFICATES—REDEMPTION.

Dear Sir:

February 28, 1928.

I have your letter of February 17th, relating to redemption of tax certificates held by the State.

The proper construction of my letter on the subject means that the face of the tax certificate can be reduced to the equivalent of an assessment based on the current valuation of the property. For example, if a certificate is sold for \$200 at public auction based on a \$200 valuation and the same is bid in by the State and before the certificate is redeemed the tax assessor assesses the following year's tax on a one thousand dollar basis the face of the certificate, viz., \$200, can be cut to \$100 when the same is redeemed by taking the certificate up.

Credit should be taken with the State Comptroller for the difference between the amount of the certificate charged to the clerk and the amount accepted in redemption of the same.

The purpose of the statute was to encourage the redemption of tax certificates held by the State by allowing them to be redeemed at less than their face value under certain conditions. Of course, you understand that the rule in question has no application to tax certificates held by private parties as these can only be redeemed by the payment of their face value.

Such was the construction originally put upon the law by former Attorney General Van C. Swearingen in an opinion rendered March 23, 1920.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION—PRIMARY—GIVING AWAY PENCILS, ETC., IN FURTHER- ANCE OF CAMPAIGN.

Dear Sir:

March 23, 1928.

Replying to your letter of March 22nd, I am enclosing you herewith copy

of a letter which I have written to Mr. J. S. Clark of St. Petersburg, Fla., which gives my opinion and interpretation of Section 5918, Revised General Statutes of Florida.

You will understand that I am simply answering these various inquiries as matters of information and that I desire to answer such inquiries in such way that if a candidate follows my advice it cannot be later said that he did something illegal, acting upon his reliance on the advice of the Attorney General.

You will notice that Section 5919 is a very drastic law. My opinion in regard to giving away cigars was based upon the language of the statute which says that money cannot be expended by a candidate except for certain kinds of advertising and no other kinds of advertising.

This being true, it would appear that if a candidate spends money for any kind of advertising other than that permitted by Section 5918 he is doing so in violation of that section.

I would suggest that you read the section carefully and also consult some of the attorneys at DeFuniak Springs as to their views upon it. As for me, I can only interpret the statute as I believe it would be interpreted by a court, if the court were called on to construe the same and I would rather make a mistake on the side of safety than otherwise.

You will notice that I do not base my opinion so much on the idea that giving away cigars, pencils, etc., is to entice the voter as upon the idea that spending money for such purpose is for an unauthorized purpose under Section 5918.

Trusting this information will be of value to you, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TRANSCRIPTS OF RECORD—PREPARATION ON APPEAL—FEES OF CLERK.

March 27, 1928.

Dear Sir:

Replying to your letter of March 19th I beg to advise that in my opinion there is nothing in the new Clerk's Fee Bill which would have the effect of a repeal or amendment of the provisions of Chapter 9281, Acts of 1923, Laws of Florida, relating to the preparation of transcripts of record upon appeal.

In all other cases not governed by Chapter 9281 it would appear that the fees are those provided for by the new fee bill.

Cordially,

FRED H. DAVIS, Attorney General.

ELECTION—PRIMARY COUNTY OFFICERS REQUIRED TO BE NOMINATED.

March 28, 1928.

Dear Sir:

Inasmuch as the Clerk of the Circuit Court is made the officer who is charged with the duty of receiving and filing oaths of persons who desire to become candidates for office in Primary Election, I beg to advise you that on Monday, March 26th, 1928, the Supreme Court of Florida handed down an opinion in the case of J. W. Knight vs. John H. Atkin et al., on writ of

error to the Circuit Court of Indian River county, wherein the Supreme Court held that their Advisory Opinion to the Governor, 94 Fla. 986, 114 So. 889, in the Elmore Cohen case, would be limited to that case only and would not apply to other county officers.

I quote the following excerpt from that opinion (Knight vs. Atkin) :

When a new county is created during any one of the stated cycles or periods of four years, such county is officered by the officers named in Section 10, Article XVIII of the Constitution and the terms of office of such enumerated officers correspond with the cycle or period of the then current terms of such officers in all the other counties so that there shall be uniformity in the terms of the county officers named in Section 10, Article XVIII of the Constitution.

The effect of the last holding of the Supreme Court is to remove an apparent irreconcilable conflict between the Advisory Opinion of the Court in the Elmore Cohen case and the previous opinion of the Court reported in 68 Fla. 560.

The county officers, therefore, who should be elected in the coming General Election and accordingly must become candidates in the coming Primary Election are as follows: County Judge, Clerks of the Circuit Court, Sheriff, Tax Assessor, Tax Collector, County Superintendent of Public Instruction, County Surveyor, Justices of the Peace and Constables.

Please give this information suitable publicity in your local press in order that all candidates and prospective candidates may be advised of their rights in the premises.

The decision of the Supreme Court particularly affects terms of office of certain officers in Gulf, Gilchrist, Indian River, Martin and Dade counties.

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTION, PRIMARY—FILING STATEMENTS BY CANDIDATES—FREE

April 2, 1928.

Dear Sir:

Replying to your letter of the 29th ult. to the Attorney General, I beg to advise that Section 330, Revised General Statutes, provides that candidates for county offices shall file their statements provided for in Section 326 and pay their filing fees as required by law to the Clerk of the Circuit Court not less than 20 days previous to the day of the primary election.

There is no law requiring the clerks to remain at or around their offices until midnight on the last day, yet if the candidate should tender his statement and filing fee at any time on said day in my mind the same should be accepted as having been filed and paid within the time required by the statutes.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

ELECTION, PRIMARY—NOMINATION OF SUPERVISORS OF REGISTRATION

April 2, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of the 30th ult. on the above subject.

Please be advised that the office of Supervisor of Registration is an

appointive office, but the Democratic Executive Committee has included this office in its official call so the county supervisors will have to run in the coming primary. The candidates elected will be appointed by the Governor.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTION, PRIMARY—ELIGIBILITY TO VOTE IN

April 5, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of the 3rd inst., addressed to the Attorney General, who is at this time out of the city.

I note your inquiry as to whether a party who has been convicted of murder in your county and the judgment thereof reversed by the Supreme Court would be disqualified to vote in the primary on June 5th, 1928.

The judgment having been reversed by the Supreme Court for a new trial has the effect of placing the party in the same position as if he had never been tried.

Therefore, he will not be disqualified from voting by reason of a conviction and judgment which have been reversed for a new trial.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

ELECTION, PRIMARY—CANDIDATES—LAST DAY FOR QUALIFYING

April 10, 1928.

Dear Sir:

Section 330, Revised General Statutes, provides that each candidate for nomination for office to be voted for wholly within a single county shall file a sworn statement and receipt for committee assessment, if any were assessed, and pay his filing fee to the Clerk of the Circuit Court of the county not less than twenty (20) days previous to the day of the primary election.

In my opinion the 20-day period referred to in this section will expire on midnight, May 15, 1928.

Trusting this answers your inquiry of April 7th, and with kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTION—PRIMARY—DUTY OF CLERK TO RECEIVE CANDIDATE'S OATH AND FILING FEE.

April 10, 1928.

Dear Sir:

I have your letter of April 5th, requesting my opinion as to whether or not a candidate for nomination in the June Primary in 1928 can lawfully qualify with the chairman of the County Democratic Executive Committee under the circumstances outlined in your letter.

In the case of *John S. Taylor vs. H. Clay Crawford*, decided by the Supreme Court March 9th, 1928, the Supreme Court held that the receipt of the candidates' oath and the receipt of the filing fee by the designated statutory officer was a ministerial duty and that it was not for such officer to pass upon whether or not candidate was qualified.

In order to be a candidate a person must be a qualified elector of the

county. If the party in question has registered and paid his poll taxes to vote in your county there is no legal authority to refuse to accept his papers as a candidate for any office in Wakulla county, even though he may have registered falsely as a voter in Wakulla county and may not be entitled to vote there.

In such a case the candidate would be guilty of perjury for swearing to a residence qualification which did not exist and might also be ousted from his position by legal proceedings if it could be proved that he had so sworn falsely in order to become a registered voter.

At any rate, it is neither your duty nor the duty of the State Democratic Executive Committee to undertake to pass upon the matter in view of what the Supreme Court has said in the above case.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTION—PRIMARY—FILING CAMPAIGN EXPENSE STATEMENTS.

April 16, 1928.

Dear Sir:

Answering your letter of April 9th, I beg to advise that the dates of filing campaign expense statements by candidates as required by Sections 364 and 366, Revised General Statutes of Florida, are as follows:

First statement must be filed not earlier than May 1st nor later than May 6th, 1928.

Second statement must be filed not earlier than May 24th nor later than May 27th, 1928.

The third statement must be filed not earlier than June 6th and not later than June 15th, 1928.

You will notice that Section 366 requires a separate statement to be filed under oath, giving the names of the political workers and telling for what consideration, if any, such work was done. Such statement must be filed not earlier than June 6th nor later than June 15th.

For candidates for State office the forms provided by the Secretary of State embrace in one statement the requirements of Sections 364 and 366 as to the third and fourth statements required by law.

The last date for candidates to qualify where the office to be voted on by one county is May 15th, 1928, Section 330, Revised General Statutes.

The last date for a person to qualify as a candidate for nomination to be voted for by the electors of more than one county is May 5th.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION—PRIMARY—FILING FEE OF CANDIDATES.

April 19, 1928.

Dear Sir:

There is nothing in the statutes of Florida which requires the Board of County Commissioners to adopt a resolution fixing the amount of the filing fee for various county officers in order for the candidates to qualify.

The amount of the fee is mandatorily fixed by Section 328, Revised Gen-

eral Statutes of Florida at 3 percent of the annual salary or compensation of the office sought by the candidate, if such office has a salary.

The law governs the question and no resolution of the Board of County Commissioners is necessary.

Therefore, a person may lawfully qualify at any time after the County Democratic Executive Committee has fixed the party assessment upon paying 3 percent of the salary of the office and otherwise complying with the law.

I understand it is a general practice for the County Commissioners of the several counties to pass such a resolution as referred to by you and I presume that this is merely a determination by the County Commissioners as to what is the annual salary of the office which is to be voted on in order that the clerk may properly compute the 3 percent in question in view of the fact that most of the offices voted on in the county are offices paid by fees.

The duty of determining what the 3 percent amounts to is the duty of the Clerk of the Circuit Court and while he may file the resolution of the County Commissioners if he sees fit to do so, he is not bound by the action of the County Commissioners and therefore I would say that if a candidate has filed his necessary papers with you as Clerk of the Circuit Court, has paid his party assessment, has paid what you demanded of him under Section 328 and has received from you a receipt showing this after making the necessary affidavit to become a candidate that such a person is duly qualified and his name will have to go on the ballot in the general primary, notwithstanding such action took place prior to the action of the County Commissioners to which you refer.

In order to avoid a controversy as a matter of policy, I would suggest that you file the resolution adopted by the County Commissioners as to the amount of the filing fee to be required but as I have stated, this is not required by the law, the clerk being the judge of that question.

Very truly yours,

FRED H. DAVIS, Attorney General.

OFFICE—CONSTITUTION PROHIBITS HOLDING TWO OR MORE.

April 19, 1928.

Dear Sir:

The office of Port Commissioner of the St. Lucie Inlet District is an office within the meaning of the Constitution of the State of Florida and in the event such Port Commissioner were elected as Supervisor of Registration of the county he would have to resign his office as Port Commissioner.

The Constitution of this State prohibits the holding of two or more State or county offices of trust, profit or honor at one and the same time, although a person may hold a city office at the same time as he holds a State or county office.

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTIONS—VOTING PRECINCT

April 19, 1928.

Dear Sir:

Paragraph 7 of Section 215, Revised General Statutes of Florida, which portion is applicable to primary elections, as well as to general elections, provides:

No person shall be permitted to vote, or shall such vote be counted, unless the person registers to vote in the election district in which he or she shall have his or her permanent place of residence.

In view of this section I would say that a man who had moved his residence to Leon county and had become a voter in the City of Tallahassee could not lawfully vote in Wakulla county unless he can change his residence back to that county and re-register.

However, you will understand that whether a man has changed his residence or not is a question of fact and not a question of law, and I express no opinions concerning disputed questions of fact.

Of course, if a man is not a qualified voter he has no right to become a candidate under the terms of the oath provided by Section 326, which requires that a candidate swear that he is a qualified voter of the particular county, etc. Trusting this answers your inquiry of April 4th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTION, PRIMARY—RECEIPT OF CLERK FOR CANDIDATE'S
FILING FEE

April 19, 1928.

Dear Sir:

Answering your letter of April 14th, I beg to advise that I am of the opinion that the Clerk of the Circuit Court should issue to candidates who have complied with Section 326, Revised General Statutes of Florida, and who have paid the required filing fee, a receipt of the clerk showing the payment and the amount paid as well as other details of qualification.

In fact, there is a printed form of receipt which is generally used for this purpose, copy of which I am sending herewith.

Very truly yours,

FRED H. DAVIS, Attorney General.

COMMISSIONERS OF ST. LUCIE INLET DISTRICT—GENERAL
ELECTION

April 28, 1928.

Dear Sir:

Answering your letter of April 17th, I will say that it appears to me that the Commissioners of the St. Lucie Inlet District should be elected by the qualified electors and freeholders residing in the entire district although the law requires that one of the Commissioners shall reside in Sub-district No. 1 and two shall reside in Sub-district No. 2.

Section 1 of the call of the Democratic Executive Committee provides for the nomination of candidates for all elective State and county offices at the coming Democratic primary. As these officers are not State or county officers but district officers it does not appear that they will have to be nominated in the approaching primary, but they will have to be voted upon in the general election by the qualified electors and freeholders.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

BRIDGES—ADVERTISING FOR BIDS FOR REPAIRING

May 2, 1928.

Dear Sir:

I note your inquiry with reference to the requirements of Section 1486, Revised General Statutes, with particular reference to the matter of repairing bridges and fills in your county, caused by the recent heavy rains.

It may be unfortunate that there is no exception to the mandatory requirement of this statute, but there seems to be none, however. If the cost of repairing as applied to each job exceeds \$300, then under the law the board is required to advertise for bids.

The work could not be split up for the purpose of evading this statute. However, if the entire work of repairing any particular bridge or fill is less than \$300 then it would hardly be necessary to advertise.

Very truly yours

FRED H. DAVIS, Attorney General.

TAX DEEDS—ISSUANCE

May 3, 1928.

Dear Sir:

I have been under the impression that I had already answered your letter of March 24th, asking me to construe the law with reference to the issuance of tax deeds.

I find, however, that I apparently have not done so.

In my opinion Sections 779, Revised General Statutes, contemplates and requires that when a tax deed is issued all outstanding tax certificates shall be taken up as a condition precedent to obtaining deed so that the property from thenceforth may be clear as far as taxes are concerned.

The language of the statute is that "all other outstanding certificates governing said lands" shall be paid for and there is nothing in the statute to indicate that this language means only those outstanding taxes which are held by the State.

I might add that this opinion is in conformity with the practice as I have observed it throughout many of the other counties in this State, all of which require that all tax certificates be taken up before redemption is allowed.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION, PRIMARY—CANDIDATES ANNOUNCING AFTER FILING
FIRST EXPENSE STATEMENT

May 5, 1928.

Dear Sir:

The question contained in your letter of April 24th is answered by the opinion of the Supreme Court in the case of State vs. Patterson, 67 Fla. 499, where the Court held as follows:

If a person in good faith actually and in fact first announces or becomes a candidate for county office at a time which is less than twenty-five days prior to the date of the primary election, he must * * * qualify within the prescribed time and is required to file all the statements and do all things prescribed for such a candidate to do after he in fact becomes a candidate, but he is not required to file statements of expenses at a time when he was not in fact a candidate.

This means that if a person becomes a candidate at any time longer than twenty-five days prior to the date of the primary he must file his first statement of campaign expenses after he becomes a candidate not earlier than thirty (30) days nor less than twenty-five (25) days prior to the election, but if he becomes a candidate less than twenty-five (25) days prior to the date of the primary, i. e., between May 10th and May 15th the latter being the last date to qualify, then the candidate must file his qualification papers on or before May 15th and at the same time he files his qualification papers must file his first statement of campaign expenses which, while not being within the time named in the law, is nevertheless permitted at the time the candidate qualifies because of the fact that he was not earlier a candidate, but in order to entitle the candidate to have his name printed on the ballot when he has not filed his first campaign statement within the time limited by law, it would have to appear that such candidate in good faith became a candidate and so announced himself after the time limit for filing the first campaign expense statement expired.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION, PRIMARY—REGISTRATION OF PERSONS BY TAX COLLECTORS

May 7, 1928.

Dear Sir:

Answering your letter of May 3rd, I beg to advise that the tax collector is only authorized to register persons under the circumstances mentioned in Section 313, Revised General Statutes, viz., "when paying" poll taxes to the collector.

In the case of persons over age and not subject to poll taxes, if they desire to register before the tax collector they will have to waive their exemption and pay such poll taxes in order to be registered by the tax collector, as the tax collector is not authorized to register anyone except a person who is paying poll taxes.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTIONS—ASSISTANCE IN MARKING BALLOTS

May 14, 1928.

Dear Sir:

Replying to your request for my opinion in the matter, I beg to advise that the law of the State of Florida requires that the voting for candidates be done in secret and it is, therefore, unlawful for more than one voter to occupy the voting booth at one and the same time, and it is unlawful for a voter to see, or permit others to see, how he voted.

With regard to the marking of ballots, the law requires that each person shall mark his own ballot without assistance from anyone else unless his eyesight is so defective that he cannot see the ballot or unless he has lost his hands, etc., or is physically incapacitated to mark his ballot.

The fact that a person cannot read and write is no excuse for him to ask

for assistance in voting his ballot unless his eyesight is so bad that he cannot see to mark his ballot.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTIONS, PRIMARY—FAILURE TO FILE EXPENSE STATEMENTS

May 15, 1928.

Dear Sir:

I have your letter of May 12th, in which you asked my opinion as to whether or not a candidate who failed to file his first campaign expense account in the allotted time and who has filed same on May 12th and presented a satisfactory excuse for such failure can now be lawfully considered as a candidate for the office which he seeks.

In answer to your inquiry, I beg to quote a portion of an opinion rendered on the subject by former Attorney General T. F. West, dated May 18th, 1916, in which he said:

This statute expressly prohibits the placing of the name of a candidate who fails to file a statement required on the ballot for either the primary or the general election, and prescribes a definite penalty for those who violate it. In my opinion, no one has authority to waive the express provisions of this law.

I fully agree with Judge West's interpretation of the law and such has been its interpretation ever since the statute was passed in 1913.

While it is very unfortunate that the candidate in question failed to comply with the Act and no doubt has a good excuse for so doing, yet there are some ten or fifteen State candidates who likewise failed to comply with the law and their names are cut out by the Secretary of State.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SCHOOL BOARD—MEMBER OF NOT AUTHORIZED TO CONTRACT
FOR TRANSPORTATION OF STUDENTS.

May 19, 1928.

Dear Sir:

Answering your letter of the 16th, I think that Sections 5339 and 5349, Revised General Statutes of Florida, make it unlawful for a member of the School Board to contract for the transportation of students.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

WITNESS—NON-RESIDENT—MILEAGE AND PER DIEM EXPENSES.

May 26, 1928.

Dear Sir:

I have your letter of May 14th, requesting my opinion as to what should be allowed a witness residing out of the State of Florida who appears before a court in this State.

I have just rendered an opinion to Hon. Ernest Amos on this subject in regard to grand jury witnesses but the principles are applicable to all

witnesses and I respectfully refer you to the paragraph which I have marked, which I think fully answers your question.

I think that insofar as the compensation for the coming from outside the State is concerned, that the amount of compensation should be determined and allowed by the judge of the court by special order.

Payment of mileage traveled into the State, as well as per diems while in the State, is governed by the usual provisions of law.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION. INSPECTORS—COUNTY COMMISSIONERS MAY APPOINT
ADDITIONAL.

May 26, 1928.

Dear Sir:

The following letter, which is self-explanatory, is being sent to all clerks of this State in view of numerous inquiries as to the legality of the appointment of additional inspectors of election where voters are so numerous that the ordinary three (3) inspectors cannot properly conduct the election.

Very truly yours,

FRED H. DAVIS, Attorney General.

May 26, 1928.

Dear Sir:

Confirming my telegram to you, I beg to advise that I have carefully considered the question of whether or not it would be legal for Boards of County Commissioners to appoint additional inspectors to serve in those precincts where the voting population is so large that the three (3) inspectors provided by Section 249, Revised General Statutes, as amended by Chapter 8587, Acts of 1921, cannot properly handle the number of voters who are entitled to vote.

The statute in question says that the Board of County Commissioners shall appoint three (3) inspectors but does not, except by implication, say that additional inspectors may not be appointed. It seems to me that the proper construction of the election law should be predicated upon a consideration of the object of the election law regulation, which is to insure each qualified voter the right to exercise his franchise under circumstances which will insure a fair and impartial election, counting, canvass of the votes and declaration of result.

The case of Pickett vs. Russell, decided by the Supreme Court of Florida and reported in 42nd Florida Report, page 118, holds that an election cannot be declared void where persons act as inspectors of election and are recognized by electors as election officers and make returns of the election as such, which returns are duly canvassed.

The holding of the Supreme Court is based upon the fact that such inspectors of election are *de facto*, if not *de jure* officers, and, therefore, their acts done under cover of office should be respected and observed in the absence of any fraud.

It appears that in one precinct in this State there are 1,785 voters. Considering the time during which the polls are allowed to be open by law it will require that three (3) voters per minute be handled by the inspectors.

which is an utter impossibility. Furthermore, the law allows five (5) minutes for each voter to fill out his ballot. See Section 274, Revised General Statutes.

It can readily be seen that if a voter is allowed his full legal rights that it will be impossible for such a large number of voters to vote in one election day, which lasts from 8 o'clock in the morning until 7:25 at night (sundown).

Accordingly, I am of the opinion that in the absence of an express prohibition in the law against so doing wherever the Board of County Commissioners of any county finds that by reason of an excessively large number of voters in a particular precinct that it will be impractical for the three (3) regular inspectors provided for by law to handle the number of voters who are authorized to vote, it will be perfectly legal and proper for such County Commissioners to pass a special resolution, reciting the fact that they find and determine by reason of such an excessive number of voters that it is necessary for the proper conduct of the election that additional inspectors of election be appointed for such precinct.

Such resolution, when adopted, should be published and notice of the additional inspectors so appointed should be published in a newspaper in like manner as provided for by Section 249, Revised General Statutes. Such inspectors should be sworn in on election day as all the other inspectors are sworn in and the oath as inspector, which is taken and signed by them should be returned with other election papers and filed as part of the election returns.

I am convinced that the courts will uphold this action on the theory that the primary purpose of the election law is to insure each voter of his right to vote as well as a proper and fair conduct of the election, and that unless fraud is committed by some of the persons so appointed and acting as additional inspectors the conduct and holding of the election will not be adversely affected by the fact that more than three (3) inspectors provided for by statute are appointed and serve.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTIONS—ASSISTING IN MARKING BALLOTS

Dear Sir:

May 28, 1928.

I enclose pamphlet which gives opinion rendered by me on the subject of marking ballots by persons who are unable to mark their own ballots. You will observe that persons who, through illiteracy are unable to read or write, are entitled to no assistance in the marking of their ballots, although persons whose inability to mark their ballots is due to palsy, failure of eyesight, etc., are entitled to such assistance.

You will also observe that tickets must be marked by at least two of the inspectors, and that it is unlawful for one inspector to undertake this duty.

Very truly yours,

FRED H. DAVIS, Attorney General.

INFORMATION—OMISSION OF CLERK'S SEAL—HOW CURED

Dear Sir:

June 2, 1928.

Owing to my absence from the city I have not previously been able to answer your letter of May 26th.

I am of the opinion that when an information is filed in the County Court for which the clerk has failed to place his seal that such defect is amendable and that such seal may be lawfully placed upon the information after it is filed in order to cure any defect which may have existed by reason of its omission in the first instance.

A court seal upon a paper like a criminal information is merely an authentication of the same as an official act, and under the laws of this State an information filed without the placing of the seal of the Clerk of the Court upon the same is no ground for quashing or setting aside the information.

This subject is governed by Section 6064, Revised General Statutes of Florida, which provides in part as follows:

No indictment shall be quashed or judgment arrested or new trial be granted on account of any defect in the *form* of the indictment.

* * *

In a County Court an information takes the place of an indictment and is governed by the same rules of pleading and practice. The omission of a seal from an indictment would be a mere defect in form and as you can see by reading the section above referred to no information or indictment should be quashed for any mere defect in form.

Frequently, however, in important cases and in order to reduce the number of errors to a minimum the judge of the court will quash an indictment for a defect in form, even though the statute says that such indictment shall not be quashed for such defect, it being within the inherent power of the Court to quash its own process, whether any legal reason exists therefor or not, and based upon such inherent right courts frequently do quash indictments and informations in order that there may be no possible error of procedure committed which would give the defendant a right to appeal the case and thereby delay the ultimate accomplishment of the administration of justice.

With kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CLERK CIRCUIT COURT—ENTITLED TO COMPENSATION FOR RE-
INDEXING RECORDS

July 2, 1928.

Dear Sir:

Your letter of June 11th has been called to my attention since my return to Tallahassee.

There is nothing in the laws of Florida which will require you to re-index records destroyed by the flood without compensation.

The fact that the board has already paid you in part for the service you have rendered would seem to be sufficient basis on which to recover the entire amount of your bill.

The records are the records of the county and not your own personal property and consequently the duty of paying for what is necessary to make these records complete is upon the County Commissioners who are, in my opinion, liable for the service you have performed in indexing the records.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION, GENERAL—PREREQUISITE TO VOTE

July 13, 1928.

Dear Sir:

Section 215, Revised General Statutes of Florida, provides that the payment of poll taxes for the general election shall close on the 4th Saturday preceding the day of the election. This date falls on October the 13th for the approaching election, which is to be held November the 6th.

Section 227, Revised General Statutes of Florida, provides that the registration books shall remain open for the general election until the second Saturday of the month preceding the day in each year in which there is a general election. This date also falls on October the 13th, as I calculate the time.

Trusting this answers your inquiries, and with kind personal regards,
I am, Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFFS—FEES ENTITLED TO.

July 14, 1928.

Dear Sir:

I have your letter of July 3d, in which you ask for my opinion construing Section 2, of Chapter 10091, Acts of 1925, Laws of Florida, which reads as follows:

That the sheriffs of the several counties, when required to go beyond the limits of this State to bring back a prisoner charged with any offense, or who has been convicted of any crime in this State, and has escaped, shall charge the sum of five cents per mile for the actual distance traveled beyond the limits of this State, together with the same mileage for his prisoner, and in addition thereto he shall receive the actual and necessary expense paid out for and on account of returning the prisoner to the State of Florida.

I find that this same question that you ask was passed upon by former Attorney General Rivers Buford, who held that under the statute when a sheriff is required to cross the limits of the State of Florida he is entitled to five cents a mile for each mile traveled both ways beyond the limits of the State, and is entitled to five cents a mile for the distance which the prisoner travels, and in addition thereto is entitled to receive the actual expense paid out by him for and on account of *returning* the prisoner to the State. This includes the expenses paid to other officers for apprehending and holding the prisoner, if any, together with the prisoner's transportation and food, but does not include money which the sheriff may expend for his own transportation and sustenance.

I agree with Judge Buford's interpretation of the law as far as he goes, which I find corresponds with the interpretation placed upon the statute by former Attorney General Johnson also.

I think that the sheriff would also be entitled to reimbursement for any counsel fees which he might be forced to expend in defending his process against *habeas corpus* proceedings instituted in the state to which he went for his prisoner.

You will notice that the statute says that the sheriff is entitled to receive his actual and necessary expenses paid out and for and on account of

"returning" the prisoner to the State of Florida. In "returning" the prisoner the sheriff is, of course, forced to buy a railroad ticket for the prisoner and when he pays for same that is expense paid out for "returning" the prisoner. Likewise, whatever the sheriff pays for board and lodging for his prisoner is also a part of the expense paid out by him for "returning" the prisoner. The five cents per mile mileage allowed for the prisoner was not to pay the prisoner's fare back to the State but is to be regarded as compensation allowed to the sheriff for the services performed by him in returning the prisoner. The expense of the return takes care of the railroad fare, etc., of the prisoner.

I also think that the sheriff is entitled to any taxi hire which he may incur while away from home in connection with the return of the prisoner, as well as hotel bills incurred by the sheriff after he reaches his destination when such hotel bills are occasioned by reason of delay in getting custody of the prisoner from the out of state authorities. Telegrams when sent in connection with the "return" of the prisoner are also proper items of expense, as are also meals which the sheriff is forced to purchase while waiting to get custody of the prisoner after he arrives at his destination.

I have marked on the bill you submitted to me those items which I think are proper charges. Those not marked are considered charges not recognizable by law as they are not expenses incurred for the "return" of the prisoner, but are transportation charges incurred for transportation of the sheriff personally to and from the place from which he is required to "return" the prisoner.

As I have stated this holding accords with several opinions which were announced from the Attorney General's office during the period which my predecessors served. You will understand that this conclusion is from the consideration of the fact that the sheriff is not only supposed to be able to claim reimbursement for what he spends for going after his prisoner, but the fees allowed him are supposed to be so fixed that he will be able to earn a certain sum of money over his expenses in order to pay him for his labors in going after and bringing back a prisoner who has gone to another state.

Trusting this answers your inquiry and with kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

COUNTY ATTORNEY—CONVICTION FEE.

August 2, 1928.

Dear Sir:

The Prosecuting Attorney is entitled to \$5 for each conviction, i.e., \$5 conviction fee for each person against whom a judgment of conviction is rendered by the Court.

I am, therefore, of the opinion that if 42 prisoners are charged with the same offense in one affidavit and each pleads guilty and is sentenced by the Court the County Attorney is entitled to \$5 for each person against whom a judgment of the Court is rendered based on this plea of guilty.

This ruling has been made by the Supreme Court.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION—CONSTRUCTION PLACED UPON.

August 2, 1928.

Dear Sir:

Referring to your letter of July 24th, which came to my office while I was out of the city, I beg to advise that I adopted the construction placed upon the various statutes of the State of Florida relating to taxation which has been in force by departmental ruling of the Comptroller's office since these statutes were enacted.

I think that the last clause of Section 5, Chapter 7806, Acts of 1919, is sufficiently complete in itself and explicit enough to warrant the interpretation which has been placed thereon to the effect that tax certificate can be redeemed upon the basis of the last assessed valuation where such last assessed valuation is less than the regular valuation.

I understand that this law was prepared in the Comptroller's office and was passed for the purpose of encouraging the redemption of lands which had been sold to the State, it being taken for granted that where a land-owner had failed to pay taxes and the land had been put up and offered for sale and had been bid off by the State because there were no other bidders for it, such lands must not be worth the amount of the taxes. Consequently, the Legislature intended to hold out an inducement to the owner of these lands to redeem the taxes upon the basis of the low valuation in order to get the lands back upon the tax books so that the State and county might collect taxes upon the same.

I seriously doubt the constitutional validity of this statute, inasmuch as it destroys the equality of taxation contemplated by the Constitution but as the administrative officers of the State, including the Attorney General and Comptroller, have no right to declare a statute unconstitutional but must follow it as written we must proceed to carry out the statute in the light of that interpretation which is warranted by its language and obvious intent.

I might add that perhaps the only way a great many lands which have been knocked down to the State will ever get back on the tax books will be to have such lands redeemed on some lower valuation than that of 1925 or 1926, on which tax sale was based.

Trusting this gives you the explanation you desire, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION, GENERAL—CANDIDATES DEFEATED IN PRIMARY DEBARRED FROM HAVING NAME PRINTED ON BALLOT

Dear Sir:

August 20, 1928.

Under Section 312, Compiled Statutes 1927 (Chapter 12038, Acts 1927), amending Section 256, Revised General Statutes, it is provided that names of candidates can only be printed on the general election ballots in the manner and upon the compliance with the conditions outlined in that Act.

The Courts have held in a number of cases that the Legislature may control and regulate what names, if any, shall be printed on the general election ballots and may even go so far as to entirely prohibit the printing of any names upon such ballots, leaving the duty of writing in the names to rest upon the individual voter.

Inasmuch as the Legislature has a right to entirely dispense with the

printing of names upon the general election ballots it also has the right to lay down the rules and regulations under which such names can be printed. See *State vs. Moore*, 87 Minn. 308, 92 N. W. 4, Am. St. Reports 802.

Under Section 312, Compiled Statutes 1927, it appears that the Legislature has provided that names can only be printed upon the general election ballots in this State under the following circumstances:

1. When the candidate has been nominated at a primary election held according to law.
2. Where the candidate has been duly nominated by a convention held by a political party which is not required to hold a primary election.
3. Where the candidate has been requested to become such candidate by petition signed by not less than twenty-five (25) qualified electors from each county participating in the election, provided, such candidate has not heretofore "participated as a voter or candidate, in the affairs of a political party furnishing a nominee."

It appears, therefore, that before a candidate's name can be printed upon the ballot by petition of 25 names it must be made to appear that he has not participated as a voter or candidate in the "affairs" of a political party furnishing a nominee.

The question then arises as to what amounts to a "participation" in the affairs of a political party within the meaning of the statute.

It will be noted that the language of the statute is to the effect that the voter must not have participated in the "affairs" of such political party and the statute does not say a participation in the primary election or convention.

I would say, therefore, that when a person registers as a member of either the Republican or Democratic Party or any other recognized political party, such voter by the mere act of registration as a member of the party, especially in cases where primary elections are held to supply nominees, to that extent participated in the "affairs" of such political party and he is thereby debarred from having his name printed upon the general election ticket as a candidate against the nominee of a political party whose affairs he has participated in.

It will be noted that the statute in question is very drastic and its wording is all inclusive. The obvious purpose of passing it was to protect the nominees made by the established political parties of this State, whether nominated by a convention or by a primary from opposition from members of the same party who should be dissatisfied with the result of the primary or convention after having participated therein and would undertake themselves to become candidates against the nominee of their own party.

Of course, the statute in question only relates to the printing of names upon the ballots to be used in the general election. There is nothing to prohibit such person from becoming a candidate and asking the voters to write in his name upon the ballot in the blank lines which the statute states must be left for that purpose, but I do not think that under the statute, if questioned, when construed as the Courts are bound to construe such statutes, such candidates have the right to have their names printed upon the general election ballots, as I read the law.

Trusting this answers your letter of August 10th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION, GENERAL—PRINTING NAMES ON BALLOTS—BALLOT
BOXES*Dear Sir:*

September 20, 1928.

I have your request of September 15th for certain information concerning the application of the Florida laws to the general election.

I beg to answer the same as follows:

1. Under Chapter 12038, Acts of 1927, Laws of Florida, amending Section 256, Revised General Statutes, it is unlawful for the Board of County Commissioners to cause to be printed upon the ballots for use in the general election the names of any persons except such as are entitled to have their names printed on the ballots under said section and chapter.

A voter who presents a petition to have his name printed upon the general election ballot as an independent candidate should show in his petition that he is a qualified elector who has not participated as a voter or a candidate in the affairs of a political party furnishing a nominee during its last convention or primary election.

In other words, the elector must make it appear to the Board of County Commissioners as a condition precedent that he is one of the class of electors who is entitled to have his name printed upon the ballot as a candidate.

2. The law provides that the Board of County Commissioners shall supply one (1) ballot box for each election precinct to be used in the general election. The primary law also provides that the ballot boxes used in the primary election shall be kept intact until after the general election.

The legal effect of these two provisions is to require the Board of County Commissioners to have two (2) sets of ballot boxes: one for the primary election and one for the general election. There is no legal authority for the Board of County Commissioners to open and disturb the contents of the primary election ballot box prior to the general election merely because they require the use of such boxes in the general election.

This is probably an unfortunate state for the law to be in, but nevertheless it is the law and it should be followed at this time in order that there may be no question arising because of a failure to obey it.

3. Section 349, Revised General Statutes, contains the following provision:

And the poll lists and oaths of the inspectors and clerks, together with all ballot boxes, ballots, ballot stubs, memoranda and papers of all kinds used by the inspectors and clerks in conducting such election shall also be transmitted, sealed up by the inspectors, to the supervisor of registration to be filed in his office, and carefully preserved by him until after the next succeeding general election.

The language of this section is self-explanatory and even though the twenty-five (25) days allowed by law for starting a contest has expired, the ballot boxes and other papers relating to the primary election should be carefully preserved until after November 6th next.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS LEAVING OFFICE—ACCOUNTING.

Dear Sir:

December 29, 1928.

I have your letter of December 22nd, relating to the manner of admin-

istration of Chapter 11954, Acts 1927, relating to compensation of county officials.

It would appear that in the case of county officers who are going out of office on January 8th, they should make a report and accounting to the county for any fees which may be due it based on the last half of 1928 or that period which is subsequent to the last report.

Trusting this answers your inquiry, and wishing you the compliments of the season, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

LAND, DESCRIPTION FOR TAXATION.

December 28, 1928.

Dear Sir:

Your letter of December 10th came to my office while I was out of the city. I just now have an opportunity to answer it.

The opinion rendered by me, and which was published in the docket with reference to platting of lands for purposes of taxation was based upon the rule of law that where a taxpayer makes a return of his land for taxation and gives therein a description of the same, he cannot thereafter complain of any error in the description which he himself furnished, though it may not be in compliance with the requirement of the law.

In short, where the owner of property returns his property for taxation under a particular description he is bound in law by that description. The law says that where land has been subdivided it shall be taxed on the books according to its subdivided status. At the same time the law does not say that the taxpayer may return the property for taxation by some other description with which he will be satisfied and when the taxpayer does return his property for taxation describing it according to the legal manner of description but not following a subdivision plat, although one may exist, I am of the opinion that such a return may be accepted by the tax assessor and that assessment made under such description will be valid.

In a case where a piece of land has been sold and purchase money mortgage taken and later the land has been subdivided and a plat thereof filed in the county records by the purchaser subsequent to which the purchase money mortgage is foreclosed and the property conveyed by order of the court by its mortgage description back to the original owner, I am of the opinion that the tax assessor can take notice of the description contained in the special masters' deed back to the purchaser of the property at foreclosure sale and can deal with such description as having in legal effect superseded the plat which was placed on record by the mortgagor prior to the foreclosure of the mortgage.

As a matter of fact, I have serious doubts as to whether or not a person has a right to file a plat in the public records when he is not both the legal and equitable owner of the title, i.e., I have doubts as to whether a plat of mortgaged lands should be filed as long as the mortgage on the lands exists.

At any rate, the master's deed from the court, conveying the land by an acreage description supersedes the plat on the records as a plat on the records made by a mortgagor is subordinate to the title of mortgagee acquired by foreclosure.

Trusting this answers your inquiry, and with the compliments of the season, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXES—ENFORCEMENT OF COLLECTION

December 29, 1928.

Dear Sir:

Answering your letter of December 22nd, I beg to advise that Section 696, R. G. S., provides that all real and personal property shall be subject to taxation on the first day of January of each year and that the law shall create a lien upon such property for the purposes thereof, superior to all other liens, which lien or addition to the provisions of the law for collection of taxes on personal property may be enforced by suit in equity.

The latter portion of Section 745, R. G. S., provides that all taxes assessed against either real or personal property from the date of the assessment, shall have all the force and effect of a judgment and execution at law against the owner of such property.

Section 742, R. G. S., provides that tax collectors may appoint deputies to levy upon and seize personal property for unpaid taxes.

The last paragraph of Sec. 711, R. G. S., provides that personal property shall be responsible for the taxes on real estate and real estate shall be responsible for the taxes on personal property and both shall be responsible for a poll tax.

Answering your inquiry as to the method by which your county can enforce collection of these delinquent taxes, I beg to call to your attention the fact that under the foregoing sections of the statutes the same may be enforced in either of the several ways listed below:

1. By the tax collector issuing a warrant under Section 742, requiring the seizure of personal property for unpaid taxes due against the owner thereof. In such warrant, the tax collector may include any unpaid taxes due by the owner on his real estate as such personal property is under Sec. 701, R. G. S., liable for the real estate tax.

2. By having the county attorney institute a suit in equity against the owner of the real estate to foreclose the lien provided for by Sec. 696, R. G. S., against the real estate.

If the owner of the real estate owes any personal property taxes, it would appear that since under Sec. 711 the real estate is liable for personal property taxes, the amount of taxes sued for in the foreclosure proceedings against real estate may embrace any taxes assessed against the owner on account of his personal property.

3. By ordinary tax sale and issuance of tax deed on real estate where same is bought in by an individual and owner fails to redeem same within the two years allowed by law.

Few persons realize how drastic the provisions of our statutes are for the enforcement of taxes because the authorities having charge of tax collections have never seen fit to resort to extreme measures in order to collect taxes. The mere fact that the owner of real estate does not pay his taxes on same does not prevent the public authorities in the event that they need the money

from resorting to the procedure outlined in Section 742 and 745 to collect the tax on real estate by levy upon and sale of personality such as automobiles, etc., even though the owner of the real estate might have made up his mind that he preferred to let his land sell and take his own time about redeeming same at any time prior to the issuance of the tax deed.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY COMMISSIONERS AUTHORIZED TO PAY CERTAIN
CLAIMANTS.

December 26, 1928.

Dear Sir:

Replying to your request of December 20th, I beg to advise as follows:

Where the Board of County Commissioners has accepted orders signed by Mr. Chavous against the indebtedness of \$2,500 due by the county to him and has led the persons to whom orders were given to rely upon the proposition that they would be paid by the county direct instead of to Mr. Chavous, that the Board of County Commissioners should honor such orders and make payments in accordance with the same.

In drawing the warrants to cover such items, my suggestion is that the item be made payable to "A for the account of Sheriff Sam Chavous." This is the practice pursued by Mr. Amos, the Comptroller, in drawing warrants upon the State Treasury. Mr. Amos will honor an order for the payment of an item of State debt and will make the draft payable to the person who holds the order, if he has been specifically requested to do so by the person who is entitled to receive the State's warrant.

I think it will be entirely legal and proper for the Board of County Commissioners to pay the original claimants who have orders signed by the sheriff and filed with the board in preference to paying the last order by which the sheriff attempts to transfer the account to his wife to the detriment of the other persons holding orders.

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLES.

CATTLE DIPPING—DUTY OF RANGE RIDER.

June 13, 1927.

Dear Sir:

Attorney General Davis has referred your letter of the 10th inst. to me for reply.

Your question is as follows:

Can a man purporting to be a range rider enter an enclosure, and remove therefrom a cow that has no ticks, over the protest of the owner?

It appears that the law gives a duly authorized agent of the State Live Stock Sanitary Board very broad powers, but we find that Chapter 9201, Laws of Florida, Acts of 1923, in Section 14, provides as follows:

Section 14. It shall not be necessary under the provisions of this Act to dip the family milch cow or her calf, if such cow or

calf are at all times tick free and are at all times kept in a tick free enclosure.

Section 12 of the above Act, among other things, provides that:

* * * The agents of the board are authorized to enter into any range, premises, pasture, pen, barn, or other *enclosure* or place where cattle may be and take into custody, remove, pen and dip any cattle which have not been dipped under the supervision of the board. With kind regards and best wishes, I am,

Very truly yours,
ROY CAMPBELL, Assistant Attorney General.

CONSTABLES—POWERS AND FEES.

July 7, 1927.

Dear Sir:

I have your letter of June 28th, addressed to Hon. J. B. Johnson, Attorney General, making certain inquiries relative to your powers and duties as constable.

Some of the questions propounded by you would not be proper for me to answer until after the County Commissioners had audited the claims in question, or in the event they should ask my opinion on the subject. I refer to those questions relating to the liability of counties for certain costs.

With regard to your question No. 1, viz.: The right of a constable to go outside of his district and outside of his county, and bring back a prisoner upon a warrant issued in his district—I beg to advise that, while Attorney General Buford and Attorney General Johnson during their terms of office both rendered an opinion that a constable had a right to go to another county for a prisoner who was arrested on process issued in his district and to recover costs from the county for such services, in a recent case in Leon County Circuit Court where this question county for a prisoner that he was not entitled to recover costs, but what was tried out our circuit judge ruled that when a constable went to another ever costs were to be paid for bringing the prisoner back should be paid to the arresting officer in the county where the arrest was made. Our judge also ruled if a warrant was issued in one county and served in another county that it was the duty of the officer serving the warrant to carry the prisoner back to the county where wanted and that he should receive the cost.

The above decision of Judge Love is absolutely contrary to all previous practice in this State, and is being appealed to the Supreme Court where it will, no doubt, be settled by some decision of that tribunal.

In answer to question No. 2, I will state that I do not think you would be entitled to 74 miles covered in arresting your prisoner. The correct mileage will be the distance from the place the arrest was made to where the warrant was returnable, or the court held.

In answer to question No. 3, I will state that a constable is entitled to mileage for conveying prisoners from the Justice Court to the County Jail under legal commitment. There is no law which would require him to turn such prisoner over to the nearest deputy sheriff, as the commitment requires that the prisoner be delivered to the jailer, and that is what the constable should do—deliver the prisoner to the jailer—and charge mileage for that service.

In answer to question No. 4, I beg to advise that there is no law which would authorize you to charge mileage for going to feed a prisoner arrested by you, or for expense of feeding. Whenever you arrest a prisoner, it is your duty to carry that prisoner to the justice of the peace of that district where he must either give bond or go to jail. If he fails to give the bond required by the justice of the peace, the justice should issue an order committing the prisoner to jail. In default of that bond, it would be your duty to carry such prisoner to the County Jail and lock him up. You would be authorized to charge mileage for so doing. The fact that a prisoner is arrested does not deprive him of his right to be carried before a judge in order that he may give bail, as the Constitution guarantees the right to bail and does not make that right dependent upon whether or not the prisoner was arrested on Sunday or Monday.

Trusting this answers your inquiries, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLES—LAW AS TO FEES

February 21, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of recent date with reference to construction of certain laws relating to fees.

I am of the opinion that Chapter 10091, Acts of 1925, fixing the fees to be charged by sheriffs of the several counties of Florida has such a restricted title and is so constructed that it does not legally pertain to the fees allowed to constables notwithstanding the provisions of Section 2899, Revised General Statutes, which provides that the fees of constables shall be the same as are allowed sheriffs for like services.

If Chapter 10091 had specifically amended those sections in the Revised General Statutes which fix the fees of sheriffs instead of enacting a separate, new, and independent law on the subject, said Chapter 10091 would have become a part of Section 2899, but as it is I am of the opinion that where Section 2899 says that the fees of constables shall be the same as are allowed sheriffs for like services that it should be construed as if it read "the fees of constables shall be the same as are allowed by the general statutes to sheriffs for like services."

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLES—COST BILLS

March 20, 1928.

Dear Sir:

I thank you for your very kind offer stated in your letter of March 14th. Should the occasion require I shall be very glad to avail myself of your generosity.

Answering the question mentioned in the third paragraph of your letter, I beg to advise that cost bills for services due the sheriff or constable do not have to have the approval of the Justices of the Peace or County Judge before being submitted to the County Commissioners, as the sole authority to approve the same is vested in the Board of County Commissioners.

In some instances it is customary for the sheriff or constable to get the approval of the judge or justice as a matter of evidence to be submitted to the County Commissioners, upon which they can base their action, but there is no law which mandatorily requires this.

Very truly yours,

FRED H. DAVIS, Attorney General.

JUSTICE OF THE PEACE—NOT AUTHORIZED TO COMPROMISE CERTAIN CRIMINAL CASES

April 16, 1928.

Dear Sir:

A Justice of the Peace has no authority to compromise criminal cases brought before him as a committing magistrate, especially after the case has been acted upon and the defendant has been held for trial in a higher court having jurisdiction of the offense.

The Supreme Court recently held in the Simmans case from Arcadia that the action of a committing magistrate was a final adjudication of probable causes which even the Circuit Judge himself had no right to set aside if the same were before him on some complaint pending in his court.

Trusting this answers your letter of April 9th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLES—MILEAGE AND FEES

June 28, 1928.

Dear Sir:

Your letter of June 16th has been called to my attention since my return to Tallahassee.

I think a constable is entitled to the same mileage and fees as a sheriff when performing identical services in apprehending prisoners and returning them to the county for trial.

We recently had a case in Leon county where the Circuit Judge ruled that a constable was not entitled to mileage outside of his county. I think the Circuit Judge is wrong in his ruling and the matter has been appealed to the Supreme Court, which I am sure will not sustain such ruling.

The general rule in other counties except in this particular circuit is that the constable who executes process receives the same fees for services as the sheriff receives.

Trusting this answers your inquiry, and congratulating you upon your re-election, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLES—SERVICE OF PROCESS AND RETURN OF PRISONERS FROM COUNTIES AND STATES OUTSIDE DISTRICT.

September 1, 1928.

Dear Sir:

Answering your letter of August 20th, which came to my office while I was out of the State, I beg to advise that in my opinion a constable with the proper warrant is entitled to return a prisoner from another county or

State and send in a cost bill to the County Commissioners for payment and is entitled to payment of same.

In looking up the matter, I find that on August 5th, 1907, former Attorney General William H. Ellis, who is now Chief Justice of the Supreme Court, expressed an opinion to the same effect, a portion of which reads as follows:

If sheriffs and constables of the State did not have the power to go into other counties than those in which they were elected, and to which persons accused of crime had fled, and receive from the executive officers of the courts of the latter counties such accused persons and return with them to the county from which they fled, the criminal laws of this State could not be administered. So I think the sheriffs of this State have that power, and constables also have the same power when the process issued from the courts of which they are made by law executive officers.

On July 12th, 1924, I find that former Attorney General Rivers H. Buford, who is now also a Justice of the Supreme Court, expressed an opinion to the effect that a constable was entitled to receive the same fees as the sheriff for mileage in the execution of a criminal warrant and for the conveyance of a prisoner he is entitled to the same mileage and expenses as are allowed by statute to the sheriff, whether such mileage occurs within his district or beyond the limits of his district.

In addition to this, the Supreme Court in the case of Brown vs. Roberts, by memorandum decision without opinion, reported in 83 Fla. 716, 92 So. page 57, upheld the right of a constable at Lake City, Fla., to recover mileage for arresting and returning persons outside of his district when the warrant had been properly endorsed and he had become duly authorized to receive the custody of the prisoner outside of the county.

In view of this eminent authority, to which I have referred, I cannot see how it can be consistently contended that a constable is not entitled to mileage for going outside of his constable's district and I fully agree with what Judge Ellis said in the matter to the effect that if a constable did not have this power, and was not entitled to the costs, it would be a serious blow to the execution of the criminal laws of this State.

Replying to your other question, I will state that a constable cannot also be a deputy sheriff, as the Constitution provides that no person shall either hold or exercise the functions of more than one office under the Constitution at one and the same time. I also find that several attorneys general have expressed this same view.

Trusting this answers your letter of August 21st, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CONSTABLE—DEPUTIES—APPOINTMENT.

September 24, 1928.

Dear Sir:

In reply to yours of the 19th inst., permit me to advise that in my opinion there is no provisions in law for the appointment or employment of deputies constable other than that found in Chapter 11999, Acts of 1927.

If your county does not come within the prescribed population then in

my opinion you cannot have a deputy constable. The statute authorizes the appointment of as many deputies to the sheriff as he may see fit to appoint and this would relieve the situation in your county as the sheriff can serve any papers or perform any official duty which the constable can do or perform.

Very truly yours,
H. E. CARTER, Assistant Attorney General.

COUNTY ATTORNEYS

COUNTY JUDGE'S COSTS ON APPEAL

February 5, 1927.

Dear Sir:

Replying to your letter of the 4th inst., asking for information as to the right of the County Judge to demand his costs before certifying papers in appeal from his court in criminal cases:

Section 6151, Revised General Statutes, provides that all costs which have accrued up to the time of the judgment shall be paid by the plaintiff in error upon his suing out a writ of error from the Appellate Court, and that he shall give bond for costs accruing thereafter in the Appellate Court. The only exception to this is in case of insolvency of the plaintiff in error. The law does not require prepayment of costs of the appeal or writ of error, but only the costs which have accrued up to and including the judgment. In no case does this cost go to the County Judge but it goes into the county treasury, and the County Judge's costs are paid by the Board of County Commissioners.

However, it is the duty of the County Judge to see that the cost is paid up to the judgment and that sufficient bond is given for the cost incident to the writ of error, and upon his failure to do so except in case of insolvency he would probably not be entitled to his costs.

Very truly yours,
H. E. CARTER, Assistant Attorney General.

PROBATION OFFICERS—ASSISTANT, APPOINTMENT

April 4, 1927.

Dear Sir:

I am in receipt of your favor of the 2nd inst., with reference to the appointment and removal of assistant probation officers, has been received.

You will appreciate that any opinion I might give in this matter would not be binding on anyone and would not be binding on any court if this matter should finally go into the courts.

The appointment or employment of the assistant probation officers is chiefly an act between the Board of County Commissioners and the probation officer. It is true the statute provides that:

* * * The probation officer of said Hillsborough County, Florida, is hereby empowered to appoint an assistant probation officer who shall be of the opposite sex to that of the probation officer. * * *
Even with this language, the probation officer is not authorized or empowered to act until in the language of the statute "and shall be appointed by the probation officer upon the recommendation and with the approval of the County Commissioners of Hillsborough County, Florida."

As to the salary, the assistant probation officer has to be paid by the

Board of County Commissioners. It seems to me they have the major authority in the matter. If the words of the statute:

* * * upon the recommendation and with the approval of the
County Commissioners * * *

only go to the extent of the necessity of the appointment of an assistant probation officer and not to the extent of selecting, recommending and approving of a particular person, then the power to appoint and to remove would be with the probation officer.

These questions are not made clear in the statute and it would be decidedly unwise for me to undertake to put a definite construction on same. I am inclined to the opinion that this statute would be construed to a large extent upon the actual facts existing and if the facts warranted the Board of County Commissioners to act they would be sustained by the Court.

As the Legislature convenes tomorrow, I think it would be advisable to put through an amendment of this section clarifying this point.

With best wishes, I am,

Very truly yours,

J. B. JOHNSON, Attorney General.

DENTISTRY—PRACTICE.

December 27, 1927.

Dear Sir:

The present laws of Florida relating to the practice of dentistry read as follows:

The following persons only shall be entitled to practice dentistry in the State of Florida:

(a) Those who are now duly licensed and registered as dentists, pursuant to law, and

(b) Those who may hereafter be duly licensed and registered as dentists, pursuant to the provisions of this chapter.

See Section 1 of Chapter 10109, Acts of 1925.

In view of this statute, I am of the opinion that in order to practice dentistry in the State of Florida a person must have been on the date of the passage of Chapter 10109, Acts of 1925 a licensed and registered dentist in the State of Florida or must procure his license from the State Board of Dental Examiners in accordance with the provisions of that Act. The law of 1887, as well as Section 2219 *et seq.* of the Revised General Statutes relating to the practice of dentistry have been repealed and superseded by Chapter 10109, Laws of Florida, Acts of 1925.

I do not think that Chapter 10109 is an *ex post facto* law as applied to practicing dentists subsequent to the date of the enactment of that statute. The State, in the exercise of the police power, has a right to make such regulations governing this subject as it sees fit and the Supreme Court of the United States has held that, in several cases, there is no vested property right in a person to practice any particular profession and that states may lawfully pass laws revoking all licenses to practice professions and subsequently require all persons who have been practicing to procure new licenses from a new board and under a new law.

I might add that it is quite possible that Dr. Cason whom you mentioned was legally entitled to receive a license at the time the 1925 law was passed.

in which event he should make the necessary application for registration as a dentist based upon his status as it existed at that time.

Trusting this answers your inquiry, and with kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

CIRCUIT JUDGE—IF AUTHORIZED TO EMPLOY STENOGRAPHER.

January 3, 1928.

Dear Sir:

I am in receipt of your letter of December 24th, enclosing letter from Circuit Judge Vincent Giblin, Fort Lauderdale, Fla., with reference to the payment by the Board of County Commissioners of Broward county of an account of \$300 to Mr. J. W. Coleman, court reporter, for services performed by him as secretary to the judge, which letter of Judge Giblin reads as follows:

Among the statements of account submitted to you by my office this month for approval and payment you will note a statement of account from J. W. Coleman for services performed by him for me during the months of June, July, August, September, October and November. Mr. Coleman's account aggregates for the stated months the sum of \$300.00.

Mr. Coleman, as you know, is the official court reporter of this circuit and his salary as reporter is limited by statute to \$150.00 per month. But he isn't required under the law, because of his position as official court reporter, to perform any services as secretary to the judge and his work in this capacity has been entirely separate and apart from his official duties.

I have conducted an exhaustive and thorough search of the authorities and have requested certain members of the bar in whom I have confidence to likewise investigate the authorities and we have reached the conclusion that the judge of the court has inherent power irrespective of any statutory law to employ such assistants as may be necessary for the transaction of his work as judge of the court. Unquestionably, whether there is any law in Florida expressly authorizing it or not, I have the right as judge of the court to secure stenographic services which may be necessary for the transaction of judicial business.

It would be extremely unwarranted to expect Mr. Coleman to perform the arduous duties which he has performed in his capacity as my secretary without receiving therefor any compensation whatsoever and under my inherent right as judge I am obliged to require the payment of the additional compensation covered by his account.

You will therefore pay this account.

I have undertaken the above explanation to justify my approval of this account, but I am frank to say that I will not in the future expect Mr. Coleman to perform the services which he has been performing as my secretary without compensation. He has been working night and day and he is entitled to the additional pay.

I note that you state that the Board of County Commissioners objects

to the payment of this bill and that they request my opinion as to whether or not it should be paid by the county.

Owing to the fact that the request for the payment of this bill comes from so high an authority as a Judge of a Circuit Court of this State, I have given this matter more than usual consideration in an endeavor to arrive at a correct conclusion concerning it.

In the case of Nassau County vs. Downey, 16 Fla. 171, the Supreme Court held that no officer can bind the county for expenses on contracts unless the expenditure is expressly or by necessary implication authorized by law.

In the case of Martin vs. Townsend, 32 Fla. 318, the Supreme Court held that the Board of County Commissioners is a *quasi*-corporation and its official acts take more of the characteristics of corporate acts than those of trustees.

Section 1524 *et seq.* of the Revised General Statutes of Florida provide that the County Commissioners of the several counties shall annually make an estimate of the amount of revenues and receipts and also an estimate of the necessary and ordinary expenses and of all special and extraordinary expenses contemplated for the fiscal year ensuing for which the revenues of the year will be available.

These sections further provide that such estimate shall set out every item of expenditure contemplated or reasonably to be anticipated for the coming year with as much particularity as is practicable and in conformity with State expense accounts as is prescribed by the State Comptroller, and shall designate the particular fund from which each item of expenditure shall be paid, such designation being according to the laws of the State.

Heavy penalties are laid upon County Commissioners for violating the terms of this law. Paragraph 12 of Section 1475 of the Revised General Statutes provides that the County Commissioners shall have power to approval all accounts against the county but as above stated they are not authorized to approve any account against a county except such as they have provided for in their budget of expenses for the particular year in which the claim is to be paid.

You failed to state in your letter whether or not any such expenditure as is involved in the bill of Mr. Coleman has been placed in the budget of the County Commissioners for the current year. If no such item has been placed in the budget, I am of the opinion that to pay the same without any budget item to cover it would be a clear violation of Sections 1524 to 1530, inclusive, and would make the County Commissioners personally liable for the amount thus paid out.

While this question is not involved in the matter I might add that I am of the opinion that there is no legal objection to an item for a special stenographer for a resident Circuit Judge being included in the county budget as the County Commissioners have broad powers in fixing the items for which county funds shall be expended, and if, in their discretion the County Commissioners see fit to provide for the payment of stenographic services for Circuit Judge they should make some provision therefor in their budget in order that payment of same may be legal.

In a recent case from Duval county, Circuit Judge Daniel A. Simmons held that even the Legislature itself could not "direct" County Commissioners

as to what they should do in their official capacity in making their budget and fixing the millage of taxation: it being held by him that the Constitution of this State contemplated a certain policy of local self-government which was left to the county officials to administer, subject to duly enacted statutes. See order dated September 23, 1927, in the case of State ex rel. William Findley vs. W. P. Belote, reported in the November issue of the docket.

On November 23, 1927, the same conclusion was reached by Circuit Judge Paul D. Barns in the case of Dade County vs. State of Florida, reported in December issue of the docket.

In view of these two decisions rendered by circuit judges in litigated matters contested before them as well as the holding of the Supreme Court in the case of Nassau County vs. Downey, *supra*, I am of the opinion that a circuit judge has no power to require County Commissioners to provide him with stenographic services at the expense of the county but that if the County Commissioners see fit to do so they have ample power under existing statutes to provide for such expense as an item of expense in their ordinary budget.

Respectfully submitted,

FRED H. DAVIS, Attorney General.

PRISON BREACH—ESCAPE—PUNISHMENT

January 10, 1928.

Dear Sir:

Section 5024 of the Revised General Statutes reads as follows:

5024. (3194) Common Law.—The common law of England in relation to crimes, except so far as the same relates to the modes and degrees of punishment, shall be of full force in this State where there is no existing provisions by statute on the subject.

Section 5025, Revised General Statutes, reads:

5025. (3195) Punishment of Common Law Offenses.—When there exists no such provision by statute, the Court shall proceed to punish such offense by fine or imprisonment, or both, but the fine shall not exceed five hundred dollars, nor the imprisonment twelve months.

From these sections it will be noted that the common law of England is in full force in this State insofar as crimes are concerned, with the exception that the punishment for crime as fixed by the common law is abolished, and where no special statutory provision exists for the punishment of common law crimes the same are punishable by the penalty provided by Section 5025 above quoted.

In other words, a common law crime which is not covered by separate statutory punishment in Florida and which was a felony at common law would become a misdemeanor under Section 5025 by reason of the punishment therein provided to be visited on those committing such crimes.

Referring to the common law, with reference to escapes from prison, I find the following statement of the law in Wharton's Criminal Law, Volume III, Eleventh Edition, Section 2003:

Prison Breach is a Forcible Departure from Custody.—Prison breach is the breaking out of the place of lawful confinement, State vs. Beebe, 13 Kan. 598, 19 Am. Rep. 93, 1874; Owens vs. State, 32

Texas Crim. Rep. 373, 3 S. W. 988, 1893, by a person involuntarily confined, against the will of his custodian; and by the English common law the offense is a felony if the commitment were for felony, or a misdemeanor if the commitment were for a misdemeanor. *Rex v. Haswell*, Russ. & R. C. C. 458; *Rex vs. Martin*, Russ. & R. C. C. 196. See 2 Hawk. P. C. Chap. 18, No. 16; *Kyle vs. State*, 10 Ala. 236, 1846; *Re Steven*, 52 Kan. 56, 34 Pac. 459, 1893; *People vs. Thompson*, 9 Johns 70, 1812 (New York); *Com. vs. Miller*, 2 Ashm. (Pa.), 61, 1835.

Section 2006, Wharton's Criminal Law, Vol. III, 11th edition, reads as follows:

Custody of Any Kind Enough.—The breaking need not be from a public prison. If there be force, it is a prison breach to escape from an officer in the streets.

Section 2007, same volume, reads:

Attempt Is Indictable.—When the breaking out is not accomplished the defendant may be indicted for an attempt. But a breach is effected by throwing down, when escaping, a loose brick on top of a prison wall.

It appears that some distinction exists between breach of prison and escape. It has been held that even the departure by a person from voluntary confinement and without force, as when the jail door is left open and the prisoner walks out, without interruption, is an indictable misdemeanor. See Section 2009, Wharton's Criminal Law, Vol. III, 11th edition.

Trusting this answers your inquiry of the 3rd inst., I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

PLUMBING CODE

January 11, 1928.

Dear Sir:

I have your letter of January 4th, with reference to the present status of the laws of Florida governing plumbing.

Some time ago I had occasion to consider this matter and reached the same conclusion as that referred to in your letter, i. e., that Sections 2251-2250, inclusive, were not affected by the Supreme Court opinion in the recent *quo warranto* case, *State ex rel. Fred H. Davis, etc., vs. Fowler*.

It appears that Section 2256 was intended to provide for the maintenance of sanitary plumbing in thickly populated communities adjacent to cities of 75,000 inhabitants or more and in order to insure that end being accomplished such section provides for the appointment of a plumbing inspector to inspect all plumbing and drainage facilities installed in the territory embraced in the radius of one mile beyond said city or town limits, which plumbing and drainage must be done in conformity with the rules and regulations governing plumbing in the city or town contiguous thereto.

The Legislature evidently had in mind that on the outskirts of every city of 75,000 population or more are occupied houses which might at any time become a part of the city by the extension of the boundaries of the city to include this outside territory. As every city is required by Section 2255 of the Revised General Statutes to provide by ordinance for sanitary plumbing

within its limits, it was intended that for the sake of uniformity all plumbing done outside a city of 75,000 inhabitants or more but near enough thereto to become a part thereof should be done in accordance with the rules and regulations of the city of which such outside territory was a potential part.

This being true, it would appear that in Dade county the plumbing inspector appointed by the County Commissioners of said county has jurisdiction of all plumbing installed within the territory embraced in a radius of one mile beyond said city limits except where some other city or town has been incorporated and given jurisdiction over a portion of such territory within the aforesaid limits, in which case the incorporated town would have jurisdiction over that portion of the territory which is within its corporate limits.

As to all unincorporated territory within a radius of one mile of Miami, I would say that the City of Miami has jurisdiction of such territory even though the same might be nearer to the limits of the towns of Miami Shores, Hialeah, Miami Beach, Country Club Estates and South Miami.

I can find no authority by which the plumbing commissioner appointed by the County Commissioners of Dade County can exercise authority within the corporate limits of these other towns because the obvious purpose of Section 2256 was to give such inspector jurisdiction over unincorporated territory adjacent to Miami and cities similarly situated.

Trusting this answers your inquiry, and with kind personal regards, I am,
Cordially yours,

FRED H. DAVIS, Attorney General.

P. S.—I have not investigated the particular charter powers of Miami or these other municipalities, but it is possible that something might be found which would take the case entirely out of the provisions of the general law.

MOTOR VEHICLES "FOR HIRE"—TAX

March 12, 1928.

Dear Sir:

I have your letter of March 6th, enclosing to me copy of a contract dated February 16th, between Duo Sand and Rock Company and Walter N. Knuth.

You will understand that the Motor Vehicle License Law has been amended so as to give the Motor Vehicle Commissioner the authority to determine questions of fact in regard to the classification of a vehicle as a "For Hire" vehicle or a vehicle not "For Hire."

I am of the opinion that based on the contract that you submit and the explanation of the arrangement contained in your letter the Motor Vehicle Commissioner would be warranted in deciding as a question of fact that the motor vehicle in question should be properly classified as a "For Hire" vehicle and that his decision could not be set aside in the courts.

Questions of this kind involve questions of law and fact and ascertaining what the facts of a case are. It must be borne in mind that the purpose of the law was to classify as a "For Hire" vehicle any motor vehicle which was used for the earning of money for the owner and where it appears that the vehicle is being so used it may be lawfully classified as a "For Hire" vehicle regardless of the form of the arrangement or any subterfuge which may be adopted to conceal the actual status.

The law intends to put a heavier tax upon a "For Hire" vehicle than upon one privately used because the man who is earning his living by running a truck uses the roads many times more than the individual who merely has a truck for his own private purposes.

Boiled down to its last analysis, a copy of the contract which you submit is nothing more than an agreement by which the Duo Sand & Rock Company will haul enough sand to fill in a certain lot for \$1,500. Such an arrangement in regard to road building has been held by two previous Attorneys General as well as myself, to be an employment of the motor vehicle "For Hire."

For your information there is enclosed herewith copy of my letter on this subject to Hon. Ernest Amos, dated June 11th, 1927.

Very truly yours,

FRED H. DAVIS, Attorney General

PRIMARY ELECTION—REGISTRATION—NEGROES

March 16, 1928.

Dear Sir:

I have your letter of March 13th, relative to the attempts of negroes to register and vote in the coming primary.

I have carefully studied the case of *Nixon v. Herndon*, 71 U. S. L. Ed. 759, some time ago, and the decision in that case turned upon the point that the Texas law itself on its face prohibited a negro from voting in any kind of a primary election.

It will be observed that our law is quite different. Under Section 300 of the Revised General Statutes, amended by Chapter 8582, Acts of 1921, the Primary Law is made so comprehensive that it may legally embrace within its provisions any political party which may be organized and regardless of what lines it may be organized upon. There is certainly nothing on the face of that law which would render it obnoxious to the ruling in the *Nixon* case above referred to because under this Act a person can organize a white party, a colored party, a Democratic party, a Republican party, a Catholic party, a Protestant party, Bootleggers' party or any other kind of party he or she may wish to organize and if any such party can poll as much as thirty percent of the entire vote cast it will lift itself within the provisions of our Primary Law.

I understand that some years ago the State Democratic Executive Committee, acting under authority of Section 320, Revised General Statutes of Florida, adopted such a definition of a Democrat as that term is used in connection with the predominant political party in Florida that it is impossible to be complied with by any negro.

It is only that party whose members poll 30 per cent. of the votes cast at the last election which can lawfully participate in the Primary and while a change of political affiliation may be registered under Section 309, Revised General Statutes of Florida, it will be noticed that such change of political affiliation must be made in a particular way as outlined by said Section 309 and only upon the terms and conditions as to party qualifications provided for in Section 320.

Of course, it will be understood that the method of changing party affiliations provided for by Section 309 does not apply to cities of more than 20,000 population as biennial registration is required in those cities.

It is a well known fact that no negro can truthfully say that he is a member of the Democratic party in Florida, and I think that one way of handling the situation is that when one of these negroes comes up to take oath criminal information should be filed against him for perjury and I am sure that affidavits can be secured in each case to sustain the charge.

By the time 15 or 20 negroes are roosting in the penitentiary for perjury on such a proposition the rest of them will be rather reluctant to stick their heads in the same noose.

I have no doubt that an organized, concerted effort is being made in Florida to stir up trouble and as far as I am concerned I am perfectly willing to stand back of the opinion of Attorney General Rivers Buford, rendered August 16th, 1923, to the effect that under the definition of a Democrat as used in the Florida election laws a negro cannot register and vote in the Primary Election, and to exhaust every means, legal and otherwise, to see that such position is upheld.

With kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

FISH AND GAME LAW—SALE OF FISH DURING CLOSED SEASON.

April 13, 1928.

Dear Sir:

Your letter of April 4th has been called to my attention upon my return to Tallahassee.

As I understand the case of *White vs. State*, 113 So. 94, the Supreme Court held that while the Legislature may forbid the sale or possession of fish for sale within the State during a closed season, even though the fish were imported from other states, yet such a provision is an unusual one and in the absence of an express provision that the statutes shall apply to foreign game the law will not be so construed by the courts.

In short, the Legislature must either expressly or by necessary implication show that the law was intended to apply to foreign game or fish and inasmuch as the statute is a penal one it must be strictly construed.

It seems to me under this decision that under Chapter 10527, Acts of 1925, the Legislature has failed to expressly cover trout caught outside of the State of Florida and shipped into this State and it is, therefore, lawful to sell trout caught outside of Florida and shipped in.

However, the burden of proving that the trout had been caught outside of Florida and shipped into the State would naturally rest upon the defendant as the Act prohibits the sale of speckled trout at any time in Florida and proof that the defendant was selling speckled trout would be *prima facie* a violation of the law unless the defendant could show that the speckled trout were not those covered by the law.

It seems that this interpretation of the statute is confirmed by reference to the title of the Act which is "AN ACT to regulate the taking of fish in the State of Florida in certain counties * * *."

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

FISH AND GAME LAWS

April 13, 1928.

Dear Sir:

Referring to your letter of April 3rd, I beg to advise that my opinion in the matter is that under Section 35 of Chapter 11838, it is unlawful for any person to have in his possession any fresh water fish during the closed season unless the person having such possession is able to show that the fresh water fish in question form an exception to the general provisions of the law.

I do not think that the burden of proof is on the State to show in the first instance that the fish did not come from the waters of Lake Okeechobee or other waters mentioned in the statute but upon proof that fresh water fish have been found in the possession of a party a *prima facie* case of the violation of Section 35, Chapter 11830, is made out and it is up to the party having the possession to show that the fresh water fish came from Lake Okeechobee.

Theoretically, the Legislature has changed all fresh water fish in Lake Okeechobee into salt water fish and fish that come into Lake Okeechobee are really not fresh water fish but are salt water fish.

It is a general rule of criminal law that where exceptions exist to a statute it is not necessary to negative such exceptions unless they form a part of the enactment itself.

I think that your instructions to the game warden to investigate to ascertain the place from which the fresh water fish were taken was wise, inasmuch as the State would ultimately have to prove that the fish came from some other waters than Lake Okeechobee if the defendant testified that they came from Lake Okeechobee.

Trusting this gives you the information you requested, I am, with kind personal regards,

Very truly yours,

FRED H. DAVIS, Attorney General.

CHAUTAUQUA—IF LICENSE TAX REQUIRED.

May 8, 1928.

Dear Sir:

I have your letter of May 3rd, in which you request my opinion as to whether or not a Chautauqua, as the same is commonly carried out in Florida, is amenable to the license tax provided for by Section 972, Revised General Statutes, as amended by Chapter 9322, Acts of 1923, Laws of Florida.

The language of Section 972, as amended, is as follows:

Shows of all kinds, including circuses, vaudeville, minstrels, theatricals, or any exhibition giving performances under tents or temporary structures of any kind, whether such tents are temporary structures, are covered or uncovered, shall pay a State license tax for each day as follows * * *

Section 803 provides that each person, firm and corporation engaged in any business, profession or occupation mentioned in the license laws of the State shall incur certain penalties for failure to obtain license.

I am of the opinion that a Chautauqua, as the same is commonly carried out for non-commercial purposes, and as a means of education and enter-

tainment is not a "show" within the meaning of Section 972, Revised General Statutes, as amended.

It seems to me that the rule *ejusden generis* or *noscitur a sociis* applies to Section 972 and that only those shows of a commercial character such as those specifically enumerated, viz., circuses, vaudeville performances, etc., are covered by that section.

A Chautauqua, not being in the same category or class as those specifically enumerated in the section is apparently not within the purview of that section unless so conducted and carried out as to be a commercial enterprise, carried out for profit as a business, profession or occupation.

The fact that a charge is made for admission to the performances is not the determining factor but the classification is determined by the nature of the entertainment and the purpose for which the same is being conducted.

Both the Constitution and statutes of the State contemplate the exemption of educational institutions from taxation and Section 972, it appears to me, should be construed as being in harmony with, rather than in contravention to, the spirit of these educational laws.

If the city desires to suppress the holding of these Chautauquas by exacting a license the matter can be handled by city ordinance, which can be so framed as to be broader than the State law on the subject.

I might add also that the Legislature has several times specifically refused to pass measures which undertake to impose a license tax on these so-called Chautauquas, thereby showing that it was the Legislative construction of existing statutes that such Chautauquas were not within the purview of laws now in force.

Of course, nothing in this letter is to be taken as implying that the license taxes provided for by Section 972 can be evaded by "shows" actually falling within the terms of that section merely by nominally designating the same as Chautauquas, as a means of evading the taxes.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION CLERKS AND INSPECTORS—PUBLICATION OR POSTING OF NAMES.

Dear Sir:

May 11, 1928.

I have your letter of May 8th, requesting my views with reference to the interpretation of Section 249, Revised General Statutes of Florida, as amended by Chapter 8587, Acts of 1921.

I am of the opinion that under the language used in the statute the County Commissioners shall either cause the names of inspectors and clerks of election to be published in a newspaper published in the county or in lieu thereof, where there is no newspaper published in the county, post the same for at least fifteen (15) days before the day of holding the election.

In other words, I construe the 15 days mentioned in the statute to be applicable to the period for which the name shall be posted when posting is resorted to in place of publication in a newspaper. Where publication in a newspaper is had I think one publication is sufficient, same to be made as soon as practicable after the inspectors and clerks are appointed by the County Commissioners, which you will notice by the statute must not be later than 20 days prior to the holding of the election.

To put the same in different form, the statute appears to mean published in a newspaper, or posted for 15 days.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTIONS—WATCHERS AT POLLS

June 2, 1928.

Gentlemen:

Answering your request for my opinion, I beg to advise that there is nothing in the laws of Florida which provides for each candidate to have a watcher in the polls at the time of holding the election nor afterward except under the provisions of the statute which requires that inspectors and managers at all general and special elections shall allow at all times while the ballots are being counted as many as three persons to be sufficiently near to them to see as to whether or not the ballots are being correctly read and called and the count of the votes correctly tallied.

This means that the inspectors shall permit as many of the public as they can conveniently permit to do so without interfering with the performance of their duties to be present and witness the calling and tallying of the votes in the tally books and means that not less than three (3) members of the public shall under any circumstances be allowed to witness such call and tally.

Where there are numerous candidates it would be impossible, of course, for each candidate to have a watcher crowded around the inspectors and it would seriously interfere with the performance of their duty but the inspectors should allow a fair number of the public—not less than three (3)—see them perform their duties so as to absolutely rebut the idea that there is any question of false call or tallying of votes.

During the holding of the election before the polls have closed the ballot box should be kept in plain view of the public and inspectors should perform their duties under such circumstances as the public can observe without entering the polls that the election law is being fully complied with. No persons should be permitted inside the polls except to cast their ballots.

Very truly yours,

FRED H. DAVIS, Attorney General.

CANDIDATE FAILING TO COMPLY WITH PRIMARY ELECTION LAW

July 20, 1928.

Dear Sir:

I acknowledge receipt of your letter of July 7th, in which you ask my opinion on the following question:

"Can the Board of County Commissioners or the County Canvassing Board legally declare a candidate the nominee of the party and cause his name to be printed on the ballot in the general election in November as such nominee, in a case where the candidate in question was a candidate in the primary, received a majority of the votes cast therein, filed his first and second campaign expense statements under Section 364, Revised General Statutes, but who failed to file the third and fourth statements shortly thereafter?"

It will be noted that the primary election law in Section 364 requires that

each and every candidate for nomination shall file a sworn statement of his campaign expenses, the first to be not more than 30 days nor less than 25 days, prior to the primary, the second to be not more than 12 days nor less than 8 days prior to the primary, and the third statement to be within 10 days after the date of the primary.

Section 366 provides that an additional statement giving the names of political workers, etc., shall be filed at the time the third statement is required to be filed.

The pertinent provisions of the Corrupt Practice Act which relates to the penalty for not filing campaign expense statements read as follows:

That no candidate who fails to make and file the statements required by Section 364, in the form and at the time specified shall not have the right to have his name placed upon the ballot to be used in the primary election and those entrusted with the preparation of such primary ballots shall, upon the certificate of the officer with whom said statements are required to be filed, that candidate has failed to file such statement or statements, omit his name therefrom. (See Section 5933, Revised General Statutes.)

It will be noted that the above portion of Section 5933 relates to the campaign expense statements which are required to be filed *before* the primary, and it will be noticed also that the statute specifically provides that in order for the candidate to have his name printed on the primary election ballot that he must file statements in the form "and at the time" specified. This creates a condition precedent with which the candidate must comply in order to get his name printed on the primary election ballot, and it will be noted that the "time specified" is a part of the condition precedent; therefore, any candidate who fails to strictly comply with the provisions of the law relating to the campaign expense statements which are required to be filed before the primary election, either as to form or time, does not acquire any right to have his name printed on the primary election ballot.

Section 5933 further provides as follows, with reference to printing the name of such candidates upon the general election ballot.

The name of no candidate failing to file such statements as required by said section shall be allowed or printed on the official ballot used in the general State and county election, etc.

It will be noticed that any reference to the "time specified" is omitted from this provision which has specific application to a failure to file the third and fourth campaign expense statements, and therefore it appears that any candidate who has received a majority of the votes in the primary election, and who has actually filed his third and fourth campaign expense statements, although not within the time specified by law, does not thereby forfeit the nomination acquired by him provided his failure to file his third and fourth statements was not wilfully and intentionally done and deferred to such an unreasonable length of time as to amount to an utter disregard of the law. In other words, the first two statements constitute conditions precedent to the candidate's personal right to be voted on in the primary and the "time specified" is expressly made a material part of the conditions precedent.

On the other hand, the third and fourth statements which are required to be filed after the primary are conditions subsequent and the statute expressly omits making "the time specified" a material part of the require-

ments as to these statements. Obviously, this was done in order to prevent the will of the people being defeated on a mere technicality of law, and since it is not made the essence of the filing of the third and fourth statements within the time fixed by the statute, but before any certificate declaring ineligibility is made by reason thereof does not cause the candidate to thereafter forfeit the right to have his name printed on the general election ballot.

I am, therefore, of the opinion that it is the duty of the County Commissioners of Bay county to cause the name of Mr. C. S. Russ to be printed upon the general election ballots as the Democratic nominee for the office of county judge under the circumstances outlined in your letter of July 7th.

With kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—DEALERS IN FARM PRODUCE—PEDDLERS

September 4, 1928.

Dear Sir:

Answering your inquiry of August 27th, I beg to advise that in my opinion the holding of the Supreme Court of Georgia reported in 78th S. E. at page 112, would no doubt be followed by our courts in considering Section 950 of the Revised General Statutes of Florida, and that I do not believe that a prosecution could be successfully maintained against dealers who buy farm products such as chickens, eggs, etc., from farmers and re-deliver them from trucks to retail merchants.

A peddler is in reality a person who is a dealer but who carries his stock of goods with him from which he makes sales to the public as he passes on from place to place.

The word "merchandise" as used in Section 950, Revised General Statutes, evidently has reference to staple commodities of merchandise and not such articles of perishable food, such as chickens, eggs, etc., which from the necessity of the case have to be marketed in a more direct and expeditious way than ordinary mercantile products.

Trusting this information will be of value to you, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION—REGISTRATION BOOKS.

September 4, 1928.

Dear Sir:

Answering your letter of August 28th, in regard to registration books, I beg to advise that the apparent confusion in regard to the registration books, which seems to be universal throughout the State, is due to the fact that we have entirely two separate election laws on the statute books: the General election law which has been in force for fifty years and the Primary election law, which was passed in 1913.

The original purpose of the General Election law in requiring three (3) sets of the registration books for general elections was to have one (1) copy available for registration of electors in precincts without removing the registration books from the hands of the Supervisor of Registration himself, who, under the law is entitled to register voters at the same time that they are

being registered by the district registration officers. See Section 227, Revised General Statutes.

The third copy of the registration books was intended to be preserved as the original record of registration of the county and kept at all times so securely cared for that the same would not be lost or destroyed, even though the district registration officer and the supervisor might lose such books.

In the early days of this State when there was a hot fight between carpet-baggers and the Democrats to control the politics here there were frequent election contests and more or less fraud. The most convenient way of perpetrating fraud was to vote an excess number of voters who were neither registered nor qualified and then to have the registration books become lost or destroyed so that the fraud could not be proved. The Legislature attempted to avoid this by requiring three (3) copies of the registration books so that it would be unlikely that all three would be accidentally lost or destroyed.

The Primary registration books are entirely a separate set of books and the only connection they have with the General Election at all is under the provision of law which says that names on such Primary Election books shall be "carried" upon the General Election books as registered electors. This requires a transfer of such names from the Primary Election books to the General Election books.

If your Supervisor of Registration has not prepared General Election books separate from the Primary Election books, I think that it is absolutely essential that he do so in order to prevent any question about the regularity of the election. This he can do under Section 238, Revised General Statutes.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION BOOKS—TRANSFERRING NAMES FROM PRIMARY BOOKS.

October 12, 1928.

Dear Sir:

My opinion in connection with the transcription of the names of persons who registered in the Primary Election to the General Election books is based upon the holding and reasoning given by Judge Thos. F. West, former Attorney General, in an opinion dated August 17th, 1916, which will be found on page 8 of the enclosed Pamphlet No. 2, which is self-explanatory.

Former Attorney General West was for many years a justice of the Supreme Court and it was my thought that his opinion was entitled to weigh as such. Furthermore, my own reasoning accords with that given by Judge West and I might add that the same construction appears to have been put on the law by Attorneys General Buford and Johnson, who preceded me in this office.

It may be entirely true that upon a legal contest the court would hold exactly as you indicate in your letter and that is that the transcribing of these names from the Primary to the General Election books is unnec-

essary. The Supreme Court has power to make such a ruling and it will be the law but in giving out information upon election matters, it has been my policy not to see how closely I can come to an infraction of the law without committing one but rather to advise a safe course.

The Bryan Primary Law was passed as a separate and independent bill from the General Election Law, which was left on the books and which contains separate and distinct provisions relating to registration of voters, insofar as general elections are concerned. The passage of the Primary Law did not modify or repeal any portion of the law relating to general elections and if the Bryan Primary Law itself were repealed it would not in anywise affect existing provisions as to registration of voters.

It seems to me that the safer course to pursue is to see that the names of persons registered for primary elections are carried upon the general election books, although in case of contest it may be held that the transcription of the names is entirely unnecessary.

I am unable to refer to any other authority than that contained in the pamphlet which contains Judge West's opinion and also the apparent logic of the case.

It strikes me that a pertinent reason why the primary election books cannot be used in the general election is the fact that anyone can register in the primary election books without declaring his party affiliation.

The authorities all hold that you cannot make a man declare what his party affiliation is in order to qualify him to vote in the general election, although you can do so for a primary election.

If you will examine the statutes you will find that all sections of the law beginning with Section 299 and subsequent thereto are sections which relate exclusively to primary elections. The regulations for general elections are covered by Sections 215 to 298, inclusive, and the provisions of law relating to registration books, insofar as registration for general elections is concerned, must be found in Sections 215 to 298, inclusive.

You will observe that beginning with Section 299 there is a Chapter entitled: "Primary Elections."

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—COMPENSATION.

July 9, 1927.

Dear Sir:

I have your letter of July 7th, with reference to the holding of your Board of County Commissioners as to the recent bill passed by the Legislature increasing the salary of the county judge of St. Lucie county, and that he would be paid in addition to his salary \$2.00 for each case docketed to be taxed as costs in the case.

You are no doubt aware of the constitutional provision that prohibits the passage of special or local laws fixing the fees or salaries of any class of officers except municipal officers.

I have not studied the particular bill which was passed at the 1927 session of the Legislature relative to the salary of the county judge of St. Lucie county. The holding in the Watkins case, referred to by the county attorney, was that under the terms of the law there under consideration

an attempt was made to fix the salary of officers by a local or special statute, and therefore that the law was unconstitutional because it may be classified as applying only to one county—the County of Duval.

If the recent law under which your county judge claims his increase in salary and his \$2.00 docket fee, is an act which refers to St. Lucie county by name there is no doubt in my mind but that such bill is clearly unconstitutional under Section 20 of Article 3 of the Constitution which prohibits the passage of local laws regulating the fees of officers of the State and county. On this point see *State vs. Watkins*, 102 So. 347; *State vs. Shepard*, 93 So. 667. On the other hand, if this law is so framed as to classify St. Lucie county by population without naming it, it might be upheld as a general law, even though St. Lucie county alone fell within the purview of the classification named in the Act.

I think the authorities I have cited will be helpful to you in seeing the point involved, and trust that they will be of assistance to you.

With kind regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

JUDGES.

GAME WARDEN—SALARY.

March 2, 1927.

Dear Sir:

Your favor of the 1st inst., has been received.

Section 10 of Chapter 11288, Acts of 1925, provides:

All fees imposed under the provisions of this Act, including the license fee collected, shall be set aside and known as the fish and game fund and shall be paid into the county school fund for the use and benefit of the public schools of said county, after deducting \$50 per month as compensation to the County Fish and Game Warden.

Under the wording of this section it is my opinion that you should pay the Game Warden the \$50 per month and then deposit the balance, if any, to the credit of the county school fund.

Very truly yours,

J. B. JOHNSON, Attorney General.

WORTHLESS CHECKS

June 7, 1927.

Dear Sir:

Replying to your letter of June 4th, with reference to the laws covering the issuance of worthless checks, I might state that it is my opinion that the giving of a worthless check as announced by the 1921 statute, unless at the time of uttering such check the drawer informs the person to whom check is uttered that he has no money in the bank to pay such check.

I do not think the consideration for which the check was given has anything to do with the criminality of its utterance as it was the intention of the Legislature to prohibit the issuance or putting into circulation of worthless checks, which would be a nuisance to the banks as well as to the public.

The contention has been made from time to time that the gist of the offense would be the question of fraud in obtaining property or other things

of value on the strength of the check. This contention, as far as I am advised, has never been settled by any decision of the Supreme Court. The Supreme Court in one case has held that it was in the province of the Legislature to make certain acts crimes by virtue of the old doctrine of creation of crimes *mala prohibita* and to thereby make criminal the doing of an act which would otherwise have no criminality attached to it.

Assuming that this doctrine of crimes *mala prohibita* as applied in the recent Duval county case relating to conditional sales in the opinion handed down by Mr. Justice Terrell would likewise apply to charges for issuing worthless checks under the statutes of 1921, it would appear that a person is guilty of committing a criminal offense who issues a worthless check without notifying the person to whom it is issued that check is worthless regardless of whether or not anything of value was transferred at the time of its issuance on the strength of such check being good.

In conclusion I might state that this opinion is unofficial and the questions of law discussed herein will have to be settled by decision of some court.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE'S COURTS—RULE DAY

October 17, 1927.

Dear Sir:

I agree with your construction of the law relating to Rule Days in County Judge's Courts. All provisions appearing in the statutes, even though in apparent conflict, must be reconciled with each other if possible, and no provision should be construed as rendering any other provision nugatory, if possible to construe both as having a legitimate field of operation, without conflict. See *State vs. Gadsden County*, 63 Fla. 620; *Dade County vs. Miami*, 77 Fla. 786; *State vs. Johnson*, 71 Fla. 363; *Curry vs. Lehman*, 53 Fla. 847.

This being true, Section 2588 of the Revised General Statutes fixing two rule days per month for Justice of the Peace Courts, is limited to Justice of the Peace Courts, and nothing contained in the general provisions to the effect that the rules of practice in the Justice of the Peace Courts and County Judge's Courts shall be the same, has the effect of nullifying Section 2588 or of broadening its provisions beyond the plain scope of the language used, which is specific in its reference to Justice of the Peace Courts only.

Trusting this answers your inquiry of October 15th and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

HUNTING AND FISHING LICENSES—FEES TO BE CHARGED BY COUNTY JUDGE.

December 1, 1927.

Dear Sir:

I have been out of the city for a few days and consequently your letter of the 24th, with reference to the fee to be charged for issuing hunting licenses and affixing your seal thereon, has not been answered.

It appears to me that the proper interpretation of the game law is that a license shall be issued by the county judge for 50 cents and 25 cents, respectively, which include all services that the judge must render in re-

spect to the issuance, including the placing of the seal on the license, as that authenticates the license.

However, it is the privilege of each judge who is required to act under the statute to put his own interpretation upon the Act in the first instance, if he in good faith believes that a certain interpretation should prevail and there would be nothing unlawful in the judge following out such interpretation in the absence of some ruling by higher authority as to the proper fees to be charged.

The issuance of the hunting licenses is a special statutory proposition governed by the game law and whatever authority there is to charge fees under the game law must be found in the game law. The general scale of fees provided for county judges for services outside of the issuance of licenses under the game law are fees primarily fixed to compensate the judges for their services when acting in a judicial, or *quasi-judicial* capacity.

Trusting this gives you the information that you desire, and with kind personal regards, I am,

Very sincerely,

FRED H. DAVIS, Attorney General.

JUVENILE COURT—JURISDICTION.

Dear Sir:

December 2, 1927.

Replying to your letter of November 30th, with reference to the place of holding the juvenile court, I beg to state that I quite agree with you that a court should not sit except at the county seat when engaged in the trial of ordinary civil and criminal cases.

However, the mere fact that the court was held outside of the established place for holding it would not be any ground for reversal unless that point was specifically reserved at the trial and certainly the matter could be waived as there would be nothing on the record to show that the court was not held at the proper place.

The juvenile court is a statutory court and its proceedings from their very nature were intended to be informal. I think that it would be entirely proper to have hearings in these cases at places other than the county seat at Clearwater, provided no specific objection is made to that procedure and provided also that whatever judgment is entered in the matter is entered at Clearwater. In the trial of cases without a jury it does not appear that any particular objection exists itself to take part of the proceedings away from the established place of holding court provided termination of the matter is had at the established place of holding court.

It is evident that unless specific objections are made to the holding of the term of the juvenile court other than at Clearwater or unless some injury could be shown by holding such court outside of Clearwater and in view of the informal nature of the proceedings contemplated by the Juvenile Court Act, such procedure would be a mere irregularity and not such a one as would defeat the jurisdiction of the Juvenile Court and unless taken advantage of by appeal would not affect the judgment.

As the Juvenile Court is a statutory court it would be advisable that at the next Legislature to have this point specifically covered by statute.

Cordially yours,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—WHEN LIABLE FOR "FOR HIRE" LICENSE

December 5, 1927.

Dear Sir:

A "For Hire" vehicle is defined by Section 1006 of the Revised General Statutes of Florida, as amended by Chapter 10182, Acts of 1925, to be a motor-driven vehicle, etc., in use for transporting persons, commodities or materials for compensation or such motor vehicles as may be let or rented to another for a consideration, provided that motor vehicles temporarily used by farmers for the transportation of agricultural or horticultural products from packing houses to points of shipment by transportation companies shall not be considered vehicles operated "For Hire"; provided also that motor vehicles transporting school children shall not be deemed to be used "For Hire."

A truck owner who hauled one single, isolated load and received pay therefor would not necessarily be violating the law if he did not have a "For Hire" license for such truck, but great care must be taken to prevent such incidents being used as a subterfuge to secretly engage in the "For Hire" business but have no "For Hire" license.

I think the correct rule is that if a man receives pay for even a single load hauled by him this would be *prima facie* evidence that he is engaged in the business of using his motor vehicle "For Hire" and that the burden of proof is then upon him to show that the transaction for which he received pay was only an isolated one and not part of the regular business.

The same thing might be said of those who render services of this kind in consideration of the payment of their bills for gas and oil. *Prima facie* payment for gas and oil as a consideration for the hauling of a commodity is another way of hauling for hire. The statute does not say that the man has to make a profit on his hauling. What it does say is that he must receive a consideration and, of course, the payment for gas and oil is a consideration and if indulged in as a regular business would be a "For Hire" transaction, in my opinion.

However, a single, isolated transaction not performed as part of a man's regular custom or business would not render this party liable to a "For Hire" license.

Trusting this answers your request of December 1st, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGES—EFFECT OF HOUSE BILL 763 AS TO FEES

December 13, 1927.

Dear Sir:

I have your letter of December 9th, relative to opinion rendered by me in reference to the effect of House Bill No. 763, insofar as this applies to fees of County Judges.

As you will note in the opinion rendered by me, I stated that I did not think that the schedule of fees provided for in House Bill No. 763 applied either to a Justice of the Peace or to a County Judge, with this exception, however: that insofar as the county judge's court acts as a Court of Record solely in probate matters in this State, the Judge, as clerk of his own court of record, is entitled to charge the fees fixed in House Bill No. 763 insofar as probate matters are concerned.

The provisions of Section 3337, providing that County Judges shall be courts of record have no application to County Judges' Courts exercising criminal jurisdiction. The statute in question was passed in 1868 and the construction which was placed on it then would no doubt apply now.

In exercising criminal jurisdiction County Judges are acting with the same powers and under the same rules as govern Justices of the Peace. The rules applicable to criminal proceedings in Justice of the Peace Courts are, therefore, applicable to County Judges exercising criminal jurisdiction.

Trusting this answers your inquiry, and with kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—PROCEDURE WHERE DISQUALIFIED.

December 31, 1927.

Dear Sir:

Under the statutes of Florida any justice of the peace has a right to issue a warrant for a person charged with a crime and make the same returnable before the county judge of the county and proper affidavit is filed before him.

It would appear that the proper course of action in the case you mention in your letter of December 29th, where you are disqualified to act upon your own complaint, would be for you to file your affidavit with one of the justices of the peace of your county, charging the parties you desire to prosecute with the criminal offense of which you allege them to be guilty and have such justice, who issues the warrants, make the same returnable before the county judge of the county.

Upon the return of the warrant you can file your certificate of disqualification and the Governor can then assign some other county judge to try the case.

Trusting this gives you the information you desire, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

CHILDREN—JUVENILE COURT HAS NO JURISDICTION TO TRY CRIMINAL CASES.

February 6, 1928.

Dear Madam:

I beg to acknowledge the receipt of your letter of January 31st, with reference to problem presented by cases arising in the Juvenile Court in Dade county, particularly with reference to Herbert Cravens.

The proper course of procedure to follow where, in the opinion of the judge of the Juvenile Court, a boy should not be committed to the State Reform School it seems to me would be to remand such boy to the Criminal Court of Record for trial upon the criminal offense.

There does not appear to be any legal authority for the Juvenile Court to handle the case of a boy charged with a criminal offense except to bind such boy over to the Criminal Court for trial where it is desired that an alternative sentence be imposed in the event that the reform school authorities will not receive such boy.

The statutes seem to contemplate two methods of dealing with children.

One requirement exists where the children are dependent within the meaning of the law and the other where the children are delinquent. A

child may be delinquent without necessarily being guilty of any criminal offense. In such a case the intent of the Juvenile Court Law was that such a child should be committed to the probation officer to handle as outlined in the statutes. On the other hand, when a child has been guilty of a criminal offense for which it is desired to punish such child, the only method by which this can be legally accomplished is to remand such child to the custody of the probation officer to be tried in the Criminal Court and there sentenced to the Reform School with an alternative sentence in the jail or penitentiary in the event the Reform School will not receive such child.

In short, the Juvenile Court appears to have no power to try children for crime nor to impose any sentence upon children for the commission of a crime.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BAIL BONDS—WHERE WARRANTS ISSUED BY COUNTY JUDGE.

February 10, 1928.

Dear Sir:

I note the inquiry in your letter of the 8th inst. as to whether the rule laid down in *Hatcher vs. State*, 86 Fla. 30, 98 So. 72, relative to assessing bail bonds at the time of issuing warrant and before arrest would apply where such warrant is issued by a county judge.

While there is no specific statute on the subject in my opinion the rule may be applied to the county judge's courts.

Under Section 6129, Revised General Statutes, it was provided that upon the return of the warrants with the accused the justice shall proceed to hear, try and determine the case forthwith or shall adjourn the same to some day of the next term of his court.

This was applicable to county judges unless charged by statute.

The Legislature in 1925 provided for the drawing of jury list from a jury box specially provided therefor for the trial of all cases in the county judge's court. It is now contemplated that such cases will be tried at terms of the county judge's court and not upon the return of the warrant with the accused as provided in Section 6129.

It is, therefore, my opinion that the accused is entitled to bail from the time he is arrested until the time of the trial in the county judge's court and that the bail may be fixed by the county judge under the rule laid down in the *Hatcher* case.

Very truly yours,

FRED H. DAVIS, Attorney General.

COURT OF CRIMES CASE—SUBSTANCE OF OPINION OF SUPREME COURT

February 28, 1928.

Dear Sir:

I called on Mr. Whitfield, Clerk of the Supreme Court, with a view of getting you a copy of the opinion in the Court of Crimes case. I find, however, that this opinion is some 50 pages long, each judge having contributed some view on the subject with the exception of Justices Brown and Buford.

I might add that the substance of the holding of the Court was that the

amendment to the Constitution in 1924 allows the Legislature to create new courts and to vest them with concurrent jurisdiction of causes which may otherwise be within the jurisdiction of one of the constitutional courts. Also the view was expressed and concurred in by a majority of the court to the effect that while under the statute a clerk of the Criminal Court was required to transmit to the Court of Crimes all cases of misdemeanors that, yet the Judge of the Criminal Court had power to control the actions of the clerk in transmitting causes and to retain jurisdiction of and to try such causes as he saw fit. In short, in the absence of the special order of the Judge of the Criminal Court all misdemeanors are filed in the Criminal Court but immediately transferred to the Court of Crimes, but the Judge of the Criminal Court has power to instruct the clerk not to transfer such misdemeanor cases as he sees fit. The opinion by Judge Terrell was the main opinion, but there was also a lengthy opinion by Judge Strum and one by Judge Whitfield, concurring in the opinion by Judge Terrell and adding some additional views of their own. Justice Ellis wrote a very vigorous dissenting opinion.

With kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

MINORS, MARRIED—NOT QUALIFIED TO VOTE

March 14, 1928.

Dear Sir:

I have your letter of March 8th. asking for my opinion as to whether or not removal of disabilities of a married male minor under Section 3962, Revised General Statutes, or of a married female minor under Chapter 9286, Acts of 1923, has the effect of permitting such married male or female minors to register and vote in elections in this State.

The removal of the disability in question is confined to the removal of the disability to contract and be contracted with and has no reference whatever to the removal of political disabilities, which are fixed by the Constitution and statutes of the State of Florida.

The age qualification of voters is fixed in this State by Section 1 of Article VI of the Constitution of this State and such qualifications cannot be changed by the operation of any statute.

Cordially yours,

FRED H. DAVIS, Attorney General.

ABSENT VOTERS LAW—COUNTY JUDGE'S CLERK MAY ACT FOR JUDGE

April 17, 1928.

Dear Sir:

I have your letter of April 13th, in which you asked the following question:

"Does the power given County Judge's clerks, under Chapter 11368, Extraordinary Session 1925, amending Sec. 3339 of Title VII, Article I, General Statutes of 1920, to 'exercise all non-judicial functions which the judge may perform,' extend to the taking of the oath to the affidavit made by one taking advantage of the Absent Voter's Law passed by the 1927 Legislature?"

I am of the opinion that the duties imposed upon the County Judges by

Chapter 11824, Acts of 1925, relating to absent voters are non-judicial functions of the County Judge and as such the clerks of the County Judge's Court authorized by the above statute may lawfully perform the said functions.

Very truly yours,

FRED H. DAVIS, Attorney General.

JUDGES—NOT AUTHORIZED TO PAROLE PRISONERS

Dear Sir:

April 27, 1928.

Referring to your letter of April 24th, I quite agree with you that a judge of a court should have the power to parole prisoners mentioned in your letter to meet the exigencies of occasions such as you enumerated.

I might add that such a law has been passed by one branch of the Legislature at different times, but for some reason has never passed both branches at the same session, and therefore has never become a law.

I think such a law should be enacted and I will be glad to co-operate with you in securing an enactment at the 1927 session.

In the meantime, if you have any cases which come up which you think are of such merit that they need attention, the Governor will, in extraordinary cases, grant a reprieve if specially requested to do so by the judge who sentenced the prisoner.

Under the present state of the law, however, I know of no legal way in which the judge can grant relief after the term of court at which he imposes sentence has passed.

Trusting this answers your letter, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General

ABSENT VOTER'S LAW—BALLOTS.

Dear Sir:

May 18, 1928.

Under Section 369, Revised General Statutes, a voter who votes an absent voter's ballot under the old law is required to use one of the ballots furnished to him by the inspectors of election of the precinct at which he presents himself to vote.

There is no authority for furnishing one of the absent voter's ballots printed for use under the new law to a voter in order that he may have same to use under the old law.

There is nothing to prevent a voter for his own information in knowing who are the candidates from procuring a list of the candidates who are running in his county and using such lists for his assistance in filling out his absent voter's ballot in the precinct outside the county in which he votes.

I regret that there is no way in which I can reach that conclusion that you could use one of the ballots from your own county as I am sure that much more satisfactory results would be obtained but as you will see by reading Section 369, Revised General Statutes, there is no authority for so holding.

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—FILING QUALIFICATION PAPERS.

Dear Sir:

May 21, 1928.

I have your letter of May 16th, with reference to the place of filing cam-

paign expense statements to be filed under Section 364, Revised General Statutes of Florida, by a candidate for nomination for the State office of circuit judge where a circuit embraces only one county.

I have not advised Mr. Crawford that it would be unlawful for him to receive and file a statement of campaign expenses presented in accordance with Section 364 where the candidate was running for the office of circuit judge in a circuit that only embraced one county but I did advise him that it appeared to be the intent of the primary law when construed in its entirety that expense statements should be filed with the same official who is required to receive and file qualification oaths under Sections 329 and 330, Revised General Statutes.

You will observe that Section 330, by the title placed on same, would indicate that for the purpose of administering the primary law the term "county office" is intended to mean an office which is to be voted for wholly within a single county.

You will also notice that the idea is implied under Section 329 that the term "State office" means an office to be voted for by the electors of more than one county. Accordingly, I advised the Secretary of State some time ago under Sections 329 and 330, Revised General Statutes, that candidates for circuit judge in circuits having only one county should file qualification papers for such office with the Clerk of the Circuit Court, even though the office of circuit judge was in reality a State office.

I think this holding was undoubtedly and indisputably correct.

The question then arises as to whether or not under Section 364, Revised General Statutes, the words "county office" or "position" is not used in the same sense that it is used in Section 330 and that is, to indicate an office which is to be voted on by the electors of only one county, even though such office is not in reality a county office but a State office. You will readily understand that there is some confusion in applying these statutes but since the officer who receives the qualification fee and oath of candidates is the one who is charged by law with the duty of certifying the names to the County Commissioners for printing upon the election ballots it seems to me that, construing the statutes in their entirety, the campaign expense statements should be filed with the officer who is charged with this duty so that in the event there is a default in the filing of any statement such officer can carry out his duty of cutting off such name from the primary election ballot.

In view of the conflict of Section 364 and other provisions of the primary law I have already advised the Secretary of State in one or two instances to give the candidates the benefit of any doubtful construction and to receive and file papers upon either of any one or two doubtful constructions of the statute, and leave the matter of deciding whether the statute has been complied with to some higher authority.

To be on the safe side, I would advise candidates for circuit judge in circuits having only one county to file their papers both with the Clerk of the Circuit Court and with the Secretary of State because undoubtedly the office of Circuit Court judge is a "State office" as that term is used in its ordinary sense and it could only mean something else if we understand that the words "State office" are used in the sense which would be indicated by the titles to Section 329, which seems to take for granted the fact that a

State office is an office which is to be voted on by more than one county in the sense that the term "State office" is used in the election laws.

I would also say that since the purpose of the election law was to have a statement of campaign expense filed with some public authority where it might be subject to inspection that I think that candidates, who have filed their statements in good faith with either the Secretary of State or with the Clerk of the Circuit Court in those cases which fall under a doubtful interpretation of the statutes, should not be penalized for what has been done in a honest effort to comply with the law.

Trusting this answers your letter of the 16th and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—WHEN NOT AUTHORIZED TO ENDORSE WARRANT
FOR SERVICES

May 24, 1928.

Dear Sir:

Answering your letter of May 20th, I beg to advise that I fully agree with your position to the effect that a County Judge should not endorse a warrant for services against the county, which he knows is based upon a charge of crime, the venue of which is in another county and not in the county for which the warrant is issued.

Ordinarily, the judge is under no obligation to inquire into the facts involved in a charge of crime and may endorse a warrant for service in his county by a bare inspection of the face of the warrant and a determination therefrom that the warrant is in proper form and charges a criminal offense.

When a judge endorses a warrant from another county for service in his own county he in effect is issuing a warrant for the arrest of the accused in his county and he has the same discretionary power to refuse to endorse a warrant that he has to refuse to issue a warrant where he is of the opinion that a warrant should not issue, owing to the particular facts of the case. If the County Judge were to be a mere rubber stamp in the endorsement of a warrant there would be little use for requiring endorsement at all.

It seems to be the purpose of the law in requiring the endorsement of the resident judge of the warrant sent in from another county to have the resident judge see that persons are not snatched up and taken from his county into far distant portions of the State for trial upon frivolous charges of crime, even though the crime charged may be in proper legal form.

In this way the rights of individuals are protected and the running up of enormous cost bills against the county for mileage covering the going for and returning with prisoners is thereby obviated.

Trusting this answers your inquiry, and thanking you for your expression of congratulation upon my having been nominated for re-election without opposition, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

JUSTICE'S DISTRICTS—CONSOLIDATION OF TWO

Dear Sir:

May 24, 1928.

Section 3359, Revised General Statutes of Florida, provides that when no

Justice of the Peace is elected, qualified or commissioned for a particular district and the County Commissioners by resolution of the kind recited in your letter of May 22nd, provide that such territory shall be attached to some other adjacent Justice of the Peace District that such territory so attached "shall thereafter, unless otherwise ordered by the Board of County Commissioners, be considered as part of the Justice of the Peace District to which it has been attached."

Therefore, under the resolution mentioned in your letter of May 22nd, it appears to me that Justice of the Peace District No. 3 has been made a part of Justice District No. 1 and until otherwise ordered by the County Commissioners said Justice District No. 3 no longer exists and all persons who want to run for Justice of the Peace in the territory which formerly consisted of District No. 3 should be considered candidates for Justice of the Peace in District No. 1.

In short, two districts have been consolidated into one district, for which only one set of officials should be elected by the qualified electors of the consolidated district.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGES AND JUSTICES OF THE PEACE—APPLICATION OF
HOUSE BILL 763 (CHAPTER 11893, ACTS 1927) TO FEES OF

August 13, 1928.

Dear Sir:

Shortly after I became Attorney General I had occasion to consider what effect the passage of Chapter 11893, Acts of 1927, relating to fees of Clerks of the Circuit Court had upon the fees of Justices of the Peace and County Judges, and came to the conclusion that such Chapter 11893 left the fees for County Judges as they were prior to the passage of that Act.

I find this view is confirmed by the compilers of the 1927 Compiled Statutes, who appended a note to Section 5237 (3384, Revised General Statutes) to the effect that the reference in the statutes to the effect that fees of Justices of the Peace should be the same as those provided for Clerks of the Circuit Court had reference only to those fees which were fixed at the time by the general statutes.

You will notice that Chapter 11893 did not expressly amend Section 3084, Revised General Statutes, which fixed the fees of Clerks of the Circuit Court. Whatever amendment was accomplished was done by implication only. Had Chapter 11893 expressly amended Section 3084, I believe it would have had the effect of automatically changing the fees of County Judges and Justices of the Peace, as the Legislature would have been presumed to know that the express amendment of a particular section in the Revised General Statutes would, in connection with other sections of those statutes, work a particular change, but I do not believe that an amendment by implication could legally have such effect as the Constitution requires that all bills shall have but one subject and matter properly connected therewith.

With reference to Section 3475, Revised General Statutes, I beg to call to your attention the fact that that section has reference only to fees of the County Judge in the cases of forcible entry and unlawful detainer and does not apply to the fees of County Judges generally.

For your information I enclose copy of opinion given to Hon. S. D. Jordan, Clerk, Circuit Court, DeLand, Fla., under date of October 16th, 1927, with reference to the fees of County Judges.

I might suggest to you that the subject in question is one which could no doubt be handled at the next Legislature by some amendment which would expressly fix the fees of County Judges. Under the present laws County Judges and Justices of the Peace receive the same compensation and Boards of County Commissioners are reluctant to follow any construction of a statute which will cause them to pay out more fees to Justices of the Peace.

With regard to your inquiry as to whether the County Judge's Court is a court of record, I might call your attention Section 5183, Compiled Statutes (3337, Revised General Statutes), which provides that the County Judge's Courts shall be courts of record in connection with the exercise of probate authority.

All other authority exercised by the County Judge than his probate authority is the exercise of jurisdiction which he has as an *ex officio* Justice of the Peace. See Section 5201, Compiled Statutes of 1927; Section 3348, Revised General Statutes.

Trusting this answers your inquiry, and with kind personal regards, I am,
Very truly yours,

FRED H. DAVIS, Attorney General.

DEFENDANT—WHEN NOT LIABLE FOR COSTS.

August 17, 1928.

Dear Sir:

Under the laws of this State, when a defendant is acquitted, he is entitled to be placed in *statu quo* as to any costs which may have been paid by him incident to the case which was prosecuted against him.

I am, therefore, of the opinion that if he has paid out fees in connection with the giving of an appearance bond and the approval of the same, such fees are a proper charge against the county in favor of the defendant, in the event that he is acquitted.

Section 14 of the bill of rights of the Constitution of Florida fully protects an acquitted defendant from liability for any such costs and inasmuch as the officer has performed the duty which would entitle him to payment for his services, the cost of approving the bond would naturally be payable by the county itself.

Trusting this answers your inquiry of the 16th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

WEAPONS—CARRYING BY MOTORISTS.

September 6, 1928.

Dear Sir:

Section 5100, Revised General Statutes (7202, Compiled Stats. 1927), provides as follows:

Whoever shall carry around with him, or have in his manual possession, in any county of this State, any pistol, Winchester rifle or other repeating rifle, without having a license from the County Commissioners of the respective counties of this State, shall upon conviction thereof, be punished by fine * * *.

In my opinion, the foregoing section does not make it unlawful for the owner of an automobile to carry a pistol or rifle in his car for his own protection while traveling.

The law in question was intended to prohibit the carrying of arms on or about the person, whether concealed or not, without having a license so to do.

You will understand, however, that while an automobile owner may not be violating the law in having a pistol or rifle in his automobile, he is not thereby authorized to carry the same on or about his person, whether concealed or otherwise unless he feels within one of the classifications provided for in the law, when he would be authorized to do so.

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTIONS—VOTING PRECINCTS.

September 10, 1928.

Dear Sir:

Referring to your letter of the 1st inst., which was acknowledged during my absence, I beg to advise as follows:

If your county has been legally divided into 17 voting precincts which take the place of nine (9) precincts which formerly existed, in my opinion it would be clearly illegal for the county authorities to disregard the new precincts and continue to hold the election at the voting places formerly provided for.

The courts all hold that material deviations from legally established places of holding elections invalidate such election.

The statutes of Florida fix a time within which precincts can be established or changed and provide that the boundaries thereof shall be recorded in the specified way. The voters are entitled to rely upon the recorded designations and the same must be strictly followed.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION BALLOT; ARRANGEMENT OF CANDIDATES.

October 10, 1928.

Dear Sir:

The Secretary of State is going to send out the names of the various nominees which he certifies so that the same will show the Democratic candidates placed first.

The County Commissioners are the sole judges as to how the ballots shall be arranged but as it has been customary for the Democrats to be placed first, owing to the fact that nominees of that party are nominees of the people rather than of a small convention of citizens but also because as a party they alphabetically come ahead of the Republicans.

I think most of the County Commissioners of the State will follow the arrangement which has been prepared by the Secretary of State.

Trusting this answers your inquiry of October 6th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY JUDGE—TERM OF COURT.

October 12, 1928.

Dear Sir:

Referring to your letter of October 8th, I beg to advise that I think you can make an order, deferring your regular term of court for such period of time as you see fit and reconvene it on the day to which same is deferred by your order.

There is nothing in the statute relating to county judge's court, which requires the drawing of a separate jury for the succeeding week of court, if the term lasts longer than one week. If you have already drawn a jury for your regular term I think you can make an order postponing the term for the ten days or two weeks so as to avoid conflict with the Circuit Court and excuse the jurors you have already drawn until the time your court reconvenes.

On the other hand, you can adjourn your regular term *sine die*, discharge the jury you have drawn, making an order calling a special term of court and draw a new jury for that term at your option.

The first course would appear to be more practical.

I think the judges of any court, unless restrained by statute, have inherent power to call special terms of their courts whenever the public interests require it.

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION—MARKING BALLOTS.

October 12, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of the 8th instant.

Section 275, Revised General Statutes, provides that the voter in a General Election may vote for any candidate whose name is not printed on the ticket "by filling in the name of the candidate of his choice in the blank space provided therefor, and marking the cross mark in the appropriate margin," before such named "filled in."

In view of the fact that all the statute requires is that the name of such candidate whose name is not printed on the ballot be "filled in," I am of the opinion that such "filling in" of the name may be accomplished not only with pen or pencil but by any other mechanical device such as a rubber stamp. However, there is nothing in the statute which authorizes the "filling in" to be accomplished by the use of "stickers," as that is the addition of a paper to the ballot, which the law does not authorize to be attached thereto.

The "filling in" must be accomplished on the ballot itself, i.e., some impression must be made upon the ballot furnished the elector and not upon some paper which the elector attaches to the ballot, such as a sticker.

You will notice that the statute not only requires that the name be filled in but that the voter must mark a cross (X) mark in the appropriate place before the name thus "filled in."

This provision of Section 275 as to "filling in" names is necessary to comply with the State Constitution. See *State vs. Dillon*, 32 Fla. 545, 14 So. 383, where the Supreme Court held that although it was competent for the Legislature to prescribe an official ballot and to prohibit the use of any

other, and also to provide for printing the names of certain candidates on the ballot, yet the Legislature had no power to restrict the elector to voting for some one of the candidates whose names are printed upon such official ballot.

Following this rule of the Supreme Court, all ballots prepared for General Elections are required to carry a blank line under the printed names so that the elector may exercise what the Supreme Court says is his constitutional right to vote for any person he pleases, whether his name is printed on the ballot or not.

Answering your second question, I beg to advise that I find nothing in the statutes which prohibits carrying into the voting booth a rubber stamp for this purpose any more than to carry into the voting place a pencil or fountain pen for the same purpose.

Section 5914 does prohibit the use of mechanical devices as an aid to voters in marking their ballots, but you will notice that such section is expressly limited to the use of such devices in Primary Elections and that same has no application to General Elections.

Answering your third question as to whether or not it is legal to have stickers or rubber stamps placed inside the voting booths for the purpose of filling in names, I beg to advise that the inspectors who have charge of the voting are authorized to exclude any such devices being left in the voting booths, thereby leaving it up to each elector if he wishes to use such a rubber stamp to carry into the booth with him, just as he takes in a pencil or a fountain pen. As to stickers, of course, the use of these is entirely prohibited and they should not be permitted in the polling places.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

POLLING PLACES—POSTERS AND CIRCULARS

October 12, 1928.

Dear Sir:

Answering your letter of the 8th inst., I beg to advise that I find nothing in the statutes which will prohibit the distribution of posters and circulars to voters about to cast their ballots in the coming election as long as the persons distributing same do not go within fifteen (15) feet of the polling places in violation of Section 271, Revised General Statutes.

Within the limits of the polling places prescribed by law all other posters and documents than those mentioned in Section 270 should be excluded.

Very truly yours,

FRED H. DAVIS, Attorney General.

HUNTING LICENSES—IF GUEST REQUIRED TO PAY

December 26, 1928.

Dear Sir:

I have your inquiry of the 20th, as follows:

If A has a fur-hunting license and owns hounds would B as an invited guest who accompanied A on the hunt as a listener and who has no part in the hunt be subject to a license tax?

My answer to the question is that the license is only applicable to those who are engaged in the hunt and therefore the guest in question under the circumstances you outlined would not be required to have a license.

You will readily understand, however, that it may be contended by the game warden that the so-called guest is actually participating in the hunt, in which case, if the game warden made an arrest, it would require a trial to determine whether or not the accused was merely a guest or a hunter.

Trusting this answers your inquiry, and wishing you the compliments of the season, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TRAFFIC OFFICERS—APPOINTMENT—COMPENSATION—UNIFORMS.

December 29, 1928.

Dear Sir:

Chap. 12002, Acts 1927, provides that all officers of the law engaged in policing traffic on the highways of the State of Florida outside the limits of incorporated cities and towns shall be duly appointed and qualified deputies acting under the respective sheriffs of the several counties in this State and shall be appointed or dismissed as such deputies upon the recommendation of the Board of County Commissioners of the several counties and shall be known and designated as traffic officers.

The law further provides that the compensation of traffic officers shall be paid by the Board of County Commissioners of each of the counties out of the fine and forfeiture fund and shall in no instance be less than \$1,200 per annum; and that it shall be unlawful for any such traffic officer to charge, collect or receive any compensation other than his monthly salary provided for by the Act.

This law also provides for the furnishing of uniforms and paying of such expenses of traffic officers by the County Commissioners.

My interpretation of this statute is:

(1) That no person can engage in policing any traffic on the public highways unless he has first been made a duly appointed deputy sheriff of the county in which he acts.

(2) That such deputy sheriff shall only be appointed or dismissed on the recommendation of the Board of County Commissioners of the county but this does not mean, as I interpret the law, that the County Commissioners have any right to dictate to the sheriff whom he shall appoint as his deputy nor to otherwise control the sheriff in his discretion with regard to his deputies.

The provision simply means that the sheriff cannot appoint one of his deputies as traffic officer unless the County Commissioners recommend that he do so, in which event if the County Commissioners do make such recommendation, the county will become liable for the salary and expenses of the traffic officer.

The purpose of the statutes was to put into *innocuous desuetude* the ubiquitous fee-hunting, crossroads country constable, who was an ever-present annoyance to the unwary motorist and to restrain the appointment of traffic officers except in those counties which felt that the subject was of sufficient importance to warrant the employment of any officer on a salary basis for the purpose of enforcing the traffic laws.

The County Commissioners have no power at all to appoint a traffic officer or to authorize anyone to act as a traffic officer. The appointment

of traffic officers must be made by the sheriff who must make the traffic officer one of his deputies but at the same time the sheriff is not authorized to appoint such a traffic officer or to designate one of his deputies as traffic officer unless the County Commissioners recommend that he do so.

Likewise, after a traffic officer is once appointed by the sheriff and begins to function as such, the sheriff has not right to dismiss the traffic officer except upon recommendation of the Board of County Commissioners, although I do not construe this provision as meaning that the sheriff could not discharge one of his deputies for legal cause without the consent of the County Commissioners, although such right is not expressed or reserved in the statute.

I am further of the opinion that under the State if the County Commissioners refuse to recommend the appointment of a traffic officer for the county, sheriff has no right to assign one of his deputies to the policing of traffic on the highways either with or without uniform as such assignment would amount to a violation of the last paragraph of Section 2 of Chapter 12002, which provides that it shall be unlawful for any traffic officer to charge, collect or receive any compensation other than the monthly salary provided for in the law.

The monthly salary provided for in the law is payable by the County Commissioners. If they refuse to recommend same, it cannot be paid.

To summarize, the whole matter must be one of co-operation between the County Commissioners and the sheriff or no traffic officer can be appointed at all.

Very truly yours,

FRED H. DAVIS, Attorney General.

JUSTICES OF THE PEACE

JUSTICE OF THE PEACE—MILEAGE

February 9, 1927.

Dear Sir:

Your favor of the 5th inst. has been received.

Warrants cannot be served by mail ordinarily. If it is done it is at the officer's risk. The officer is entitled to mileage for the actual number of miles traveled by the most direct and practical route in conveying the prisoner.

Where a warrant is issued in one county and the prisoner or defendant is in another county, the warrant has to be endorsed by the Justice of the Peace in the county in which it is served and the officer would be entitled to the mileage in conveying the prisoner back.

Very truly yours,

J. B. JOHNSON, Attorney General.

JUSTICE OF THE PEACE—CRIMINAL WARRANTS—COPIES.

February 15, 1927.

Dear Sir:

Your favor of the 14th inst. has been received.

There is no law requiring a justice of the peace to make two copies of criminal warrants issued by him. Copies are to be made by the sheriff but there is no law requiring the sheriff to make a copy.

Very truly yours,

J. B. JOHNSON, Attorney General.

JUSTICE OF PEACE—JURISDICTION.

February 16, 1927.

Dear Sir:

Your favor of the 14th inst. has been received.

A justice of the peace's jurisdiction does not extend beyond the limits of his district where there are justices qualified to act in the surrounding district.

Your constable would not be authorized to serve process or make arrests outside of his district unless the offense was committed directly in his presence and he immediately made the arrest.

Very truly yours,

J. B. JOHNSON, Attorney General.

JUSTICE OF THE PEACE—FEES.

February 17, 1927.

Dear Sir:

Your two letters of the 15th inst. have been received.

Where an officer arrests several defendants at the same time and conveys them to the court, or to jail, under one charge he would be entitled to mileage for the one trip and not for each prisoner.

The law does not allow the charge of constructive mileage.

Fees allowed an officer—sheriff or constable—and per diem for attendance upon court contemplates that the fee shall be paid to the officer actually in attendance on the court. Of course, if it is a deputy sheriff and paid by the sheriff the fee should go to the sheriff. If it is a constable acting in attendance on the court at the trial then the fee should go to the constable, regardless of who made the arrest.

The sheriff has no power or authority to release a prisoner once arrested. The court alone has this power and authority.

Very truly yours,

J. B. JOHNSON, Attorney General.

JURORS—QUALIFICATIONS OF.

March 8, 1927.

Dear Sir:

I am in receipt of your favor of the 7th inst., asking my opinion as to whether or not one qualified to serve as a juror in a county who resides outside of the limits of the justice's district in which the trial is held can serve as juror.

The general law governing the qualifications of jurors is: that such a juror must be a citizen of the State of Florida and have resided in the State for twelve months and in the respective county for six months. This is the qualification that has generally been applied to jurors in the higher courts.

Section 3375, Revised General Statutes, provides:

When a jury is required as aforesaid it shall be the duty of the justice of the peace to direct the officer, by a venire under the hand and seal of the justice forthwith to summon six disinterested persons who are qualified to be jurors. They shall be summoned from the neighborhood of the place, as far as may be, on or before the day appointed for the trial.

I find nothing in the statutes that requires that jurors shall be residents of the justice's district in which the trial is held. I would advise though that the jury be summoned from the district if it is reasonably possible to do so.

Very truly yours,

J. B. JOHNSON, Attorney General.

CONSTABLES—MAY SERVE PROCESS ANYWHERE IN COUNTY.

April 14, 1927.

Dear Sir:

Your favor of the 10th inst., addressed to Hon. Rivers Buford, was referred to me for attention.

Section 2897 of the Revised General Statutes provides that constables can serve process of justice of the peace courts and county judge's court anywhere in the county, when a constable has a proper paper to serve, same having been issued by the county judge or justice of the peace he can serve the same anywhere in the county and he would be entitled to his legal fees for such service.

Very truly yours,

J. B. JOHNSON, Attorney General.

COUNTY OFFICERS—FEES

April 18, 1927.

Dear Sir:

There is enclosed herewith pamphlet containing laws covering fees to be paid to county officers.

The estreatment of bonds is had under Sections 6050 and 6056 of the Revised General Statutes. There is no specific fee for this service. They would be covered under other provisions, where judgment on the bond estreatment is entered.

I advise you to consult the State Attorney in that circuit as the proceedings in estreatment or the entry of judgment on such a bond will be governed entirely by the amount of the bond and as to what court had jurisdiction.

Very truly yours,

J. B. JOHNSON, Attorney General.

JURISDICTION

May 2, 1927.

Dear Sir:

Your favor of the 30th ult. has been received.

The statute provides that suits shall be brought in the county or justice district where the defendant resides or where the cause of action accrues. It further provides that when the suit is brought in a district or county where the defendant does not reside, an affidavit must be filed along with the *praccipe*, stating that said suit is brought in good faith and not for the purpose of annoying the defendant. In all cases where possible the suits should be brought in the county or justice district where the defendant resides or where the cause of action accrued.

Very truly yours,

J. B. JOHNSON, Attorney General.

CONSTABLE—AUTHORITY TO ARREST IN CERTAIN CASES

June 24, 1927.

Dear Sir:

I will answer your letter of June 22, as follows:

1. A constable would have authority to arrest a man caught in the act of unloading liquor in Dade county, even though such crime was not to be committed in the district in which such constable was commissioned. Constables are by statute made executive officers of the County Judge's Court, and as such have jurisdiction throughout the county.

2. You failed to state whether the special deputy you refer to is a special deputy sheriff, or a special deputy constable. If such deputy be a sheriff he would have the right to apprehend any one caught in the act of violating the law anywhere in Dade county, and he might lawfully take such offender, or offenders, before any court in the county having jurisdiction of such offense.

Trusting this answers your inquiry, I am

Yours very truly,

FRED H. DAVIS, Attorney General.

JUSTICES OF THE PEACE—HOW FEES PAID

October 10, 1927.

Dear Sir:

Answering your letter of the 6th inst., I beg to advise that the law requires the executive officer of the Court to collect fines and costs and pay same into the county treasury. Neither the Justice of the Peace nor the executive officer have any right under the law to retain the costs paid by the person convicted in any case.

Costs of Justices of the Peace and constables or sheriffs as the case may be are paid in fees upon the presentation of the cost bill itemizing the services rendered, which cost bill under the law must be audited and approved by the County Commissioners and paid by the county. The Justices of the Peace are not authorized to collect costs or the fine in any case, but this is to be paid to the executive officer of the Court, who is either the sheriff or the constable.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

COSTS—HOW COLLECTED AND PAID

October 10, 1927.

Dear Sir:

Answering your letter of the 6th inst., I beg to advise that the law requires the executive officer of the Court to collect fines and costs and pay same into the county treasury. Neither the Justice of the Peace nor the executive officer have any right under the law to retain the costs paid by a person convicted in any case.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

PRIOR CONVICTION—COURT CANNOT TAKE JUDICIAL NOTICE

Dear Sir:

October 14, 1927.

The Supreme Court has decided that a court cannot take judicial notice of the fact that a man is a second offender under the criminal law. The fact

of former conviction as well as the identity of the person convicted are questions as which the accused is entitled to a jury trial and such facts must be alleged in the affidavit or indictment. Of course, if you know that a person brought before you is a second offender you would have the privilege, in issuing a warrant to him to refer to his conviction in preparing the affidavit against him and in that way make a proper charge of being a second offender, but in any event it must be not only alleged but proved beyond a reasonable doubt that the man has been convicted on a prior occasion.

Trusting this answers your letter of September 30th, which has not been answered earlier because of my absence from the State, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

JUSTICE OF THE PEACE—NOT AUTHORIZED TO APPOINT
INDIVIDUAL

November 10, 1927.

Dear Sir:

In the absence of the Attorney General from the State your letter of November 7th has been referred to me for attention.

I note your request for our construction of Section 6000, Revised General Statutes, as to whether a Justice of the Peace would be authorized to appoint an individual to execute the process issuing out of such court in case of indisposition on the part of the constable.

In my opinion a Justice of the Peace would not be authorized to appoint such individual except in the case of disqualification or inability to act on the part of both the sheriff and the constable. The said statute provides two executive officers for such court: the sheriff and the constable, and so long as either is able to act as such executive officer, it can hardly be said to have been the intent of the law to authorize the justice to appoint an individual.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

JUSTICE OF THE PEACE—CERTAIN FEES NOT APPLICABLE.

December 12, 1927.

Dear Sir:

Replying to your letter of December 10th, I will state that this office has made a ruling to the effect that the fees mentioned in Chapter 11893, Acts of 1927, are *not* applicable to justices of the peace or county judge's courts.

The 1927 law does not amend the Revised General Statutes, fixing fees of Clerks of the Circuit Court. Consequently, those sections remain in force and Section 3351 still governs fees of justices of the peace and county judges.

With kind personal regards, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

CORONER'S JURY—MAY SUMMON PHYSICIAN TO ASSIST THEM.

R. G. S. 6199.

Dear Sir:

December 22, 1927.

Answering your letter of December 17th, I will state that Section 6199 of the Revised General Statutes of Florida provides that the coroner's jury

may request a coroner to summon a physician to assist them in their examination of a deceased person under conditions set forth in the statute.

When a physician has been lawfully summoned and required to attend an inquest as provided for by Section 6199, he is undoubtedly entitled to be paid his mileage as a witness in addition to his witness fee.

I am unable to find anything in the statutes which would indicate that it was intended to require a physician to forfeit the privileges which would otherwise attach to him as a witness generally.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

MARRIAGE LICENSE—NO TIME LIMIT REQUIRED.

November 21, 1927.

Dear Sir:

There is no time limit within which a person must reside in Florida in order to obtain a marriage license.

Trusting this answers your letter of November 16th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLE LICENSE LAW—LICENSE PLATES.

February 16, 1928

Dear Sir:

Section 1017, Revised General Statutes of Florida, as amended by Chapter 8410, Acts of 1921, reads as follows:

1017. Number to Be Displayed.—No person shall operate or drive a motor vehicle, trailer, semi-trailer or motorcycle sidecar on the public highways of this State unless such vehicle shall have a distinctive number of signs to it by the Comptroller, conspicuously displayed on a metal plate attached to the rear end of such vehicle, such near plate to be so placed as to catch the side rays of the tail light by night, and securely fastened so as to prevent same from swinging. No person shall display on such motor vehicle, trailer, semi-trailer, or motorcycle sidecar at the same time any number assigned to it under any other motor vehicle law.

You will note that there is an obvious typographical error in the section as it appears printed in the Session Laws and construing the purpose of the amendment of Section 1017 as it existed before the amendment, I am confident that the meaning is clear enough to support the same interpretation of Section 1017 as now amended as it existed with reference to it before this amendment. In other words, I do not think that the typographical error which appears in the amendment to Section 1017 in anywise will defeat the enforcement of Section 1017, as amended, as being a requirement that persons operating motor vehicles must have a distinctive number displayed on a metal plate attached to the rear of the vehicle.

The words "number of signs to it by the Comptroller" may be disregarded as surplusage, after which by construing Section 1017 in connection with other provisions of the motor vehicle license law its meaning will be clearly ascertained and the intent of the Legislature made effective, viz.,

that the number which must be conspicuously displayed shall be a number assigned to the vehicle by the proper officer.

Trusting this answers your request for my opinion. I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

JUSTICE OF THE PEACE—NOT AUTHORIZED TO DIRECT VERDICTS

March 6, 1928.

Dear Sir:

Replying to your request of February 28th for my opinion as to whether or not a Justice of the Peace is authorized or required to direct verdicts of juries in civil and criminal cases, I beg to advise that the matter is governed by Section 1 of Chapter 10163, Acts of 1925, which limits the right and duty to direct verdicts in civil and criminal cases to the Judges of Circuit, Criminal, County or Civil Courts of Record.

It will be noted that the office of the Justice of the Peace is not included in the above section.

I am, therefore, of the opinion that in view of the fact that this provision of law does not include Justices of the Peace and also in view of the fact that errors cannot be assigned on the record in appeals from Justice of the Peace courts, trials in such cases being *de novo* in the Circuit Court in the event of appeal, that it is not legally proper for a Justice of the Peace to undertake to direct verdicts in cases tried before them.

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—SECOND CHOICE VOTE

March 31, 1928.

Dear Sir:

Answering your letter of March 22nd, requesting information as to whether or not it is mandatory to vote a second choice in order that the first choice vote may be counted, I beg to call your attention to opinion rendered on this question by former Attorney General Thos. F. West, March 28, 1916, in which he says:

There is nothing in the primary election law compelling a voter to vote for a first and second choice in any case. This is left to the option of the voter, who may or may not do so as he chooses.

Since this opinion was rendered, or in other words, for the past twelve years, such has been the accepted construction of the law which has been followed in this State, and you are, therefore, advised that the first choice vote will be counted regardless of whether or not the voter casts any second choice vote or not, although the voter who fails to vote a second choice when he is permitted to do so is thereby forfeiting a portion of his franchise as there is no possible way in which a person's second choice vote can count against his first choice vote.

Cordially yours,

FRED H. DAVIS, Attorney General.

BOND COVERING FINE AND COSTS, MUST BE PAID

April 12, 1928.

Dear Sir:

Where a man gives a bond to pay fine and costs under Sections 6121 and 6122, Revised General Statutes of Florida, and fails to comply with the

terms of the bond he may be arrested and made to serve his sentence. In addition thereto the bond can be collected.

Once he gives a bond the fine and costs must be paid, and the fact that he served out his sentence does not discharge the bond.

Trusting this answers your letter, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

JUSTICE DISTRICTS—CONSOLIDATION OF

May 25, 1928.

Dear Sir:

The County Commissioners only have authority to consolidate Justice of the Peace districts in the manner provided by Section 3359, Revised General Statutes of Florida, or I believe that the County Commissioners might lawfully reduce the number of Justice of the Peace districts in a county to not less than two district, providing they did not interfere with the term of office of any Justice already commissioned.

I think the County Commissioners would have the right to combine several districts into one, to take effect next January, when the terms of the new officers begin.

Very truly yours,

FRED H. DAVIS, Attorney General.

JUSTICE OF THE PEACE—TERM OF OFFICE

Dear Sir:

September 15, 1928.

Your term of office as Justice of the Peace will expire on November 6th, the date of the next General Election.

However, your successor's term of office will not begin until the first Tuesday after the first Monday in January, 1929. Accordingly, unless someone is specifically elected to fill the period of time from November 6th to January 8th, you will continue to hold office under your present commission during that period even though it legally expires on November 6th.

In reality, the people will have to vote for a Justice of the Peace for the term beginning November 7th and ending January 8th and will have to vote in a separate place on the ballot for a term of office for four (4) years beginning January 8th.

If the county commissioners do not put the short term of office on the ballot, you will continue to hold until January 8th.

This matter has been passed on by the Supreme Court in a specific instance which originated in Leon county.

The above is in answer to your inquiry of the 12th instant.

Very truly yours,

FRED H. DAVIS, Attorney General.

TRAFFIC OFFICERS ON STATE HIGHWAYS—UNIFORMS.

December 8, 1928.

Dear Sir:

The statutes of Florida, requiring that all officers of the law engaged in policing traffic on the public highways in the State of Florida outside of the limits of incorporated cities and towns shall while on duty as such traffic officers wear a police uniform and badge of authority, has reference to

a duty which is imposed upon officers engaged in policing traffic on public highways and arresting or attempting to arrest persons for violating the traffic laws outside the limits of incorporated cities and towns in this State and makes such officers liable to prosecution for failing to comply with the Act; but such failure does not deprive the officer of his constitutional and statutory power as such officer to make arrests for violations of the traffic law when the same are committed in his presence.

In other words, an officer engaged in policing traffic is required to have a uniform or he is guilty of a misdemeanor and subject to punishment for such offense as well as to removal from office for failure to comply with the law.

At the same time where an arrest has been made by a duly authorized sheriff or deputy sheriff for a violation of the traffic law committed in the presence of such sheriff or deputy sheriff the arrest is legal, notwithstanding the fact that the officer was not in uniform.

Furthermore, the statute requiring uniforms is applicable only to officers who are engaged in policing traffic on the highways. It was never intended that sheriffs and deputy sheriffs should be prohibited from making occasional arrests for traffic violations committed in their presence merely because they were not in uniform but only the officers whose duties comprise the policing of traffic only should be provided with such uniforms.

The law should be carried out in the spirit in which it was written and sheriffs and their deputies should conform to the same where they are in effect engaged in policing traffic on the highways and indeed, they are liable to prosecution for failing to obey the law where it can be shown that they are in fact engaged in policing traffic on the highways and have not complied with the provisions of the Act requiring uniforms.

If the County Commissioners refuse to furnish such uniform it is the duty of the officer to provide one for himself, as the failure of the county to provide the uniforms does not excuse the officer for failure to comply with the law, although it may give the officer the right of action against the county to require them to reimburse him for the expense of same.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFFS.

MOTOR VEHICLES—CONFISCATION UNDER LIEN.

January 27, 1927.

Dear Sir:

Your favor of the 24th inst., with reference to the confiscation of property used in violation of the prohibition laws, has been received.

Your duties with reference to this matter and also the duties of the Clerk of the Circuit Court are prescribed in Sections 5481 and 5485 of the Revised General Statutes, as amended by Chapter 10217, Acts of 1925. This law provides:

* * * any automobile or other vehicle seized under this Act against which there is existing a mortgage lien or retain title contract held by a person who has no knowledge that such vehicle is being used in the violation of the prohibition laws then such seizure shall not invalidate such lien or retain title contract but the same

shall be paid out of any funds derived from a sale of said property, provided the retained titleholder or mortgagee shall within thirty days after the seizure come into Court and set up his claim to such retained title lien or mortgage.

Very truly yours,

J. B. JOHNSON, Attorney General.

BONDSMEN—RELEASE.

February 3, 1927.

Dear Sir:

Your favor of the 1st inst. has been received.

We have no statute in Florida governing the question of bondsmen coming off a criminal bond. As to whether or not they can do so is something of which we have never had any definite statute.

An appearance bond is a contract and it would take an order of the court to rescind or modify it. If the bondsmen desire to surrender the defendant and come off the bond, it is my opinion that they would have to deliver the defendant to the court or get an order of the court for his re-arrest.

Very truly yours,

J. B. JOHNSON, Attorney General.

PRISONERS. WHEN SHOULD BE SENT TO RAIFFORD

February 7, 1927.

Dear Sir:

Your favor of the 4th inst., with reference to prisoners being sent to Raiford, has been received.

When a prisoner is sentenced he has thirty days in which to give bond and secure a supersedeas. If he does not give this bond or is not adjudged insolvent and a supersedeas ordered by the judge who tried the case, he is subject to be sent to the convict camps or to Raiford regardless of his suing out a writ of error. No sentence is superseded unless the bond is given or the judge trying the case orders a supersedeas, or supersedeas is ordered by the Supreme Court.

When ever a supersedeas is granted it will appear in the record and files in the office of the Clerk of the Criminal Court of Record if that Court tried the case or in the office of the Clerk of the Circuit Court if the case was tried by the Circuit Judge.

Where the writ of error is sued out and no supersedeas is granted, the prisoner should be sent to Raiford. When the Supreme Court confirms a criminal case and the defendant is out on a supersedeas he should be taken into custody as soon as the mandate from the Supreme Court goes down to the lower court. The mandate from the Supreme Court is always sent to the clerk of the trial court. The prosecuting attorney in a Criminal Court of Record or the State's attorney where the case is in the Circuit Court, should be able to advise you in each case.

You will appreciate the fact that as the records are all in the lower court this office is not advised until after the case reaches the Supreme Court and then is not advised of the facts unless someone volunteers to furnish them to this office. Until we get a copy of the transcript of the record we have no way of knowing whether a supersedeas has been obtained or granted in any

particular case. The prosecuting attorney of the lower court should keep advised of the status of the case and see that each defendant is sent to Raiford at the proper time.

Very truly yours,

J. B. JOHNSON, Attorney General.

SHERIFF'S COSTS

Dear Sir:

February 8, 1927.

Your favor of the 7th inst. has been received.

Where it is necessary for both the sheriff and a bailiff to be in attendance on the Court it would be legal to make a charge for both of these officers—\$4.00 per day for the sheriff and \$3.00 per day for the bailiff.

You will understand that the bailiff is peculiarly a court officer whose duty it is to wait on the Court and the jury and to perform such duties as are necessary around the court room. It was not contemplated by the statute that both of these charges should be made unless the attendance of the sheriff and bailiff was necessary. As to whether or not this was necessary would be a discretionary question for the judge presiding at the Court.

Very truly yours,

J. B. JOHNSON, Attorney General.

WARRANTS, WHEN DUPLICATE REQUIRED

Dear Sir:

February 18, 1927.

Your favor of the 16th inst., with reference to duplicate warrants, has been received.

Chapter 9321, Acts of 1923, is entitled:

An Act relating to the issue of search warrants and to the execution of the same, and providing penalties for the violations of the provisions of this Act.

The requirements of this Act that warrants shall be issued in duplicate applies only to search warrants and not to any other class.

Very truly yours,

J. B. JOHNSON, Attorney General.

CONSTABLES—ARRESTS.

Dear Sir:

March 9, 1927.

Your favor of the 7th inst. addressed to Hon. Rivers Buford with reference to constables in your county making an arrest, has been received.

If these constables have been either elected or appointed by the Governor and duly commissioned as constables they would have the right to make lawful arrests in their district, to serve any warrants or papers delivered to them for service, to arrest any criminals or to arrest anyone committing a crime in their presence where the law provides for an arrest without a warrant.

Of course, I do not know whether or not these constables have been commissioned or not. If you will send me their names I will investigate in the office of the Secretary of State and let you know whether or not they have been commissioned.

Very truly yours,

J. B. JOHNSON, Attorney General.

CONSTABLE—AUTHORITY OF.

March 14, 1927.

Dear Sir:

Your favor of the 11th inst. has been received.

We find from the records here that Mr. C. W. William is a regularly commissioned constable.

Where there is no justice of the peace in a justice of the peace district, a justice in an adjoining district or the county judge has jurisdiction.

It is my opinion that where a constable makes an arrest and there is no justice of the peace in his district, he is authorized to take the defendants before the county judge or before a justice of the peace in some other district adjoining.

Very truly yours,

J. B. JOHNSON, Attorney General.

GAME WARDENS—AUTHORITY TO MAKE ARRESTS.

April 16, 1927.

Dear Sir:

Your favor of the 13th inst., with reference to game wardens serving process or warrants issued from the county judge's court, has been received.

The authority to make arrests by game wardens is conferred by Section 2 of Chapter 10133, Acts of 1925. This provision reads:

* * * for the purpose of enforcing the provisions of this Act, and all other Acts relating to game, fresh water fish or fur-bearing animals, and for that purpose the State Game Commissioner and his duly authorized deputies are hereby vested with the same powers as deputy sheriffs or other peace officers, to arrest any person violating any of the provisions of this Act, or other special or general laws relating to game and fresh water fish, or fur-bearing animals; and are further authorized to make all such arrests without warrant, for any such violations committed in their presence.

As I read the above provisions, it is my opinion that it only confers the power to make arrests for violations committed in the presence of such deputies. There is nothing in this provision that authorizes them to execute the process of the courts in such matters.

The use of the word "Violating" would indicate that the game wardens would have the authority to make the arrest when the person is caught in the act.

This will answer your letter to Mr. J. B. Royall, dated April 13th also.

Very truly yours,

J. B. JOHNSON, Attorney General.

SHERIFF'S FEES—NOT AUTHORIZED FOR SEIZURE OF STILLs.

May 2, 1927.

Dear Sir:

Your favor of April 30th, with reference to sheriff's fees for seizure of moonshine stills, has been received.

No opinion has been rendered by me or my predecessor on this question that I am advised of.

As I understand it, the law with reference to intoxicating liquors and the seizure of stills, etc., does not provide any special fees for this service.

I am inclined to the opinion that the sheriff should secure an amendment, allowing reasonable compensation for this service.

Very truly yours,

J. B. JOHNSON, Attorney General.

COUNTY JUDGE—WHEN AUTHORIZED TO ENDORSE SUMMONS AD RESPONDENDUM.

June 13, 1927.

Dear Sir:

I have your letter of June 10th, asking if it is necessary for the county judge of Sumter county to endorse a summons *ad respondendum* issued by another county judge before legal service can be made by you as sheriff of Sumter county of the said summons.

I beg to advise that there is no law requiring that civil process be endorsed for service in a county other than that in which it was issued. The law requiring endorsement of process in county judges' courts is confined to criminal process.

However, the Supreme Court has held that summons *ad respondendum* issued from county judge's courts have no legal effect if served in counties other than the county in which they were issued. This holding of the Supreme Court does not make it illegal for you to serve a summons in Sumter county if the summons were issued by a county judge of another county but simply means that if defendant who was served by summons voluntarily enters his appearance in response to it no default judgment could be legally entered on such service.

Very truly yours,

FRED H. DAVIS, Attorney General.

COMMUTATION OF SENTENCE—PROCEDURE.

October 6, 1927.

Dear Sir:

We have your letter of the 4th inst., advising that you are in receipt of commutation of sentence granted to one Annie Mae Jackson, alias Billie Jackson, convicted in the Circuit Court of Duval county and sentenced to death.

We note your statement that the circuit judges of Duval county informed you that the matter is out of their jurisdiction and that they have no authority to furnish a commitment to be delivered to the State Prison Farm and that the superintendent will not receive the prisoner without a commitment.

Section 12 of Article IV of the Constitution of Florida provides for the commutation of punishment after conviction in all cases except treason and impeachment subject to such regulations as may be prescribed by law relative to the manner of applying for pardons, and upon such conditions and with such limitations and restrictions as the Pardon Board may deem proper.

When a party has been convicted in the courts of this State and sentenced to punishment therefor and the Pardon Board commutes such punishment the effect of such commutation is to amend the sentence pronounced by the Court, which, by operation of law becomes the amended judgment in such case.

The commutation referred to in your letter has the effect of reducing

the punishment imposed by the Court from death to imprisonment in the State Prison for life.

I would suggest that you have the commutation of sentence filed with and recorded by the Clerk of the Circuit Court in his minutes and that the clerk prepare and furnish to you for the superintendent of the State Prison a certified transcript of the conviction, judgment, sentence and commutation of sentence by the Pardon Board, which, in my opinion, is sufficient authority for delivery by you to such superintendent and acceptance by him of the prisoner and upon which she shall be committed to the State Prison for life. This is a ministerial act on the part of the clerk and requires no further action by or from the circuit judges.

Respectfully,

H. E. CARTER, Assistant Attorney General.

LEGAL COSTS FOR EXECUTING WRIT OF *HABEAS CORPUS*.

November 10, 1927.

Dear Sir:

The Attorney General being absent from the State, your letter of the 7th inst. has come to me for attention.

I note a copy of letter from you to the Attorney General under date of September 15th last, which seems from your recent letter to have been unanswered. We have been unable to find said letter in the files of this office or any copy of a reply thereto and for this reason I am sure it must have gone astray in the mail. The Attorney General is very prompt and courteous in replying to all letters, particularly from county officers. For this reason, in addition to the fact that the same cannot be found in this office, I am sure that it never reached here.

In my opinion you are entitled to your legal costs for executing writ of *habeas corpus* and that same should be paid by the county in which the party was held. The judge before whom the writ was returnable evidently overlooked the matter of awarding the costs as provided in Section 3577, Revised General Statutes, but this should not affect your right to your legal costs.

Under the law you were compelled to obey the writ by producing the body of the petitioner and since it was before the Circuit Court the county should pay the same. It is not, in my opinion, a charge against the Federal Government.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

EXTRADITION—PROCEDURE.

November 23, 1927.

Dear Sir:

Supplementing my telegraphic answer to your letter of November 19th, relative to the method of procedure to be followed in connection with fugitives from justice, I beg to advise as follows:

The statutes of this State contemplate that the alleged fugitive from justice may be arrested upon a warrant issued by the Legislature and held for not exceeding ten days while awaiting the procurement of proper extradition papers by the Governor of the demanding state.

The Federal statutes also contemplate that when an extradition application is received from a demanding state that the alleged fugitive from justice shall be entitled to a hearing before the Governor of the asylum state before the requisition is finally honored.

In cases where no fugitive from justice warrants have been issued prior to the receipt of the extradition papers the Governor can issue a warrant or proclamation for the arrest of the alleged fugitive and when such an alleged fugitive is arrested under such process the Governor should be immediately notified in order that the accused may have a hearing if he desires one but after the accused has had a hearing or opportunity for one has passed and the Governor has issued a removal warrant, authorizing the agent of the demanding state to remove the prisoner from this jurisdiction, any sheriff in this State into whose hands removal warrant shall come is not only authorized to, but required to, forthwith hand the prisoner over to the agent of the demanding state without further notice to the Governor and the agent of the demanding state is authorized to immediately remove such prisoner from this State on such removal warrant.

You will understand that there is a distinction between a removal warrant issued by the Governor, authorizing the removal of persons from this State and a mere warrant issued by the Governor under Section 6182 of the Revised General Statutes for the apprehension of the alleged fugitive.

There is no limitation as to the time within which a warrant of apprehension issued under Section 6182 can be executed. In fact, it seems to remain in force until executed, however long that may be. When executing such warrant, the Governor should be immediately notified after the person is apprehended, as I have stated above, as a warrant issued under Section 6182 is not a removal warrant.

Trusting this answers your inquiry of November 19th in more detail, I am,

Very truly yours, .

FRED H. DAVIS, Attorney General.

SHERIFF'S FEES FOR DESTROYING LIQUOR

December 7, 1927.

Dear Sir:

This will acknowledge the receipt of your favor of the 3rd inst., inquiring if sheriffs are allowed a fee of \$5.00 for destroying liquor.

The last sentence of Section 5483, Revised General Statutes of Florida, reads as follows:

That for the performance of the duties required of the sheriff by the provisions of this section, or the provisions of Sections 5481 and 5482, he shall receive the same fees provided by law for the arrest and return of persons charged with crime, including the same mileage and the actual cost of transporting such things, and for each seizure made by him or his deputy, *when the same are ordered destroyed or sold by the Circuit Judge*, he shall receive an additional fee of five dollars, and all such fees and compensations shall be paid out of the fine and forfeiture fund of the county, as costs are paid upon the conviction of an insolvent person.

It will be noted, however, that you would only be entitled to receive the

\$5.00 fee for destruction of liquor seized when liquor is destroyed under orders of the Circuit Judge.

Trusting this answers your inquiry of the 3rd inst., I am,

Cordially yours,

ROY CAMPBELL, Assistant Attorney General.

SHERIFFS—DUTIES AS TO CASH BONDS

December 12, 1927.

Dear Sir:

Under Section 6037, Revised General Statutes, sheriffs taking cash bail bonds are required to deposit the same in some bank to the credit of the officer as trustee for the State and defendant. This section further provides that if the bond shall be estreated the money shall be immediately paid into the county treasury according to the condition of the said bond or returned to the defendant, if he shall comply with the conditions of such bond.

It is, therefore, the duty of a sheriff to pay such cash bond into the county treasury after it has been ordered estreated and no liability for the money or any part thereof attaches to the sheriff after he has turned such money into the county treasury. However, as the statute says if the defendant complies with the condition of the bond the money must be repaid to him out of the county treasury by action of the County Commissioners. In this connection, you will note that an "estreature" of a bond is not a "forfeiture" of a bond. An estreature is a mere record by the Court of the fact that the defendant has failed to comply with the terms of the bond, based upon which a forfeiture may later be had.

The Judge of the Court, in setting aside an estreature of a cash bond, has the right to order that the amount of the bond, which has been paid into the county treasury, be refunded to the defendant. However, if the sheriff no longer has the money but has turned it into the county treasury after the estreature of the bond the sheriff is under no obligation to return the money, that being the duty of the County Commissioners, who have control of funds in the county treasury. After a defendant is convicted and sentenced to pay fine and costs, in default of which he is ordered to serve a term in jail, the sheriff is required to take charge of the defendant and keep him in custody until the fine and costs are paid, after procuring a proper commitment from the Court, authorizing and directing him to carry out the Court's judgment.

The Supreme Court has held that after imposing sentence, the judge has no further control over the execution of the sentence, that being a matter entirely up to the executive department of the State. See *Tanner vs. Wiggins*, 54 Florida 203, 45 Southern 459.

If a defendant in a criminal case had to pay a cash bond, which has been estreated and the money paid into the county treasury, and desires to use such bond money to pay his fine and costs he should make application to the County Commissioners for the return of the cash bond to him because of the revocation of estreature and should himself pay to the sheriff the amount of his fine and costs. The sheriff is under no obligation to go out and hunt up sources from which the defendant may pay his fine and costs.

Trusting this answers your letter of December 10th, which you will understand is not an official opinion on a matter of this kind as this office

has no authority to render official opinions to county officers in matters of this nature, but is given for information only, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF—NOT REQUIRED TO ACT PERSONALLY IN CERTAIN
MATTERS

January 13, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of the 7th inst., addressed to the Attorney General, in which you request an opinion as to whether it is compulsory for you to make personal service of civil papers.

There is no law requiring the sheriffs of Florida to act personally in these or any other matters. It is within the discretion of the sheriffs to act personally in these matters or by their legally constituted deputies, for whose conduct they are officially responsible, and so long as the service is performed as required by law no one has any right to complain or demand that the sheriff act individually in such matters.

Very truly yours,

FRED H. DAVIS, Attorney General.

COSTS—DEPOSITS FOR, REQUIRED ONLY IN CERTAIN CASES

March 24, 1928.

Dear Sir:

Replying to your letter of March 20th, I beg to advise that the Supreme Court of Florida in the case of Simmons vs. State, held that the provisions of the law requiring the giving of bond or deposit for costs in order to secure the issuance of a warrant for the arrest of a person charged with crime did not apply to cases where the crime charged was a crime of a public nature but related solely to those classes of cases where the complaining witness alleges that he has suffered special damages in his own person or private property.

In the case referred to, the county commissioners of Holmes county were required by mandamus to pay the court costs accruing in a case where a person was charged with the violation of the prohibition law and acquitted. The county commissioners refused to pay such costs on the ground that no costs had been deposited or bond taken and the Supreme Court held that their refusal was not justified and ordered them to pay the costs in question.

It is the duty of all county judges and justices of the peace to exercise proper discretion in the issuance of warrants against persons charged with criminal offenses and no warrant should be issued, whether costs are deposited or not, unless the judge who issues the warrant believes that there is some probable cause that the defendant is guilty of the offense charged and will be found guilty upon a trial.

Very truly yours,

FRED H. DAVIS, Attorney General.

COURT COSTS—TO WHOM PAID

March 27, 1928.

Dear Sir:

Your inquiry of March 21st is answered by the provisions of Section 6139, Revised General Statutes of Florida, which provides that all fees

imposed by any court, if paid *before* the accused is committed shall be received by the judge and if paid *after* the accused is committed payment shall be made to the sheriff of the county.

After you have been given a commitment for a prisoner payment of fines and costs should be made to you as the person holding the documentary evidence of authority to make the collection, viz., the commitment.

Very truly yours,

FRED H. DAVIS, Attorney General.

JURORS IN COUNTY JUDGE'S COURT—PAY OF, FROM FINE AND
FORFEITURE FUND

April 26, 1928.

Dear Sir:

The pay of jurors in county judges' courts is not charged against defendants who are tried during the term.

The pay of such jurors should be taken out of the General County Fine and Forfeiture Fund and no part of same can be charged against a defendant as costs.

The only way the county can be reimbursed for the costs of the jury is for the judge to fine the defendant a sufficient amount to make up for the amount the county has to pay out.

In regard to the board of prisoners held in jail while awaiting trial, I beg to advise that the universal practice throughout the State is to charge the board up to the time of conviction as part of the costs. I seriously doubt whether this is authorized by the law but I am not disposed to advise that the practice be discontinued in view of the fact that it has been indulged in such a long time.

Trusting this answers your inquiry of the 24th inst., I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

FINES, WHO ENTITLED TO COLLECT

May 7, 1928.

Dear Sir:

When a fine is imposed in a County Judge's Court or in any Justice of the Peace Court and the fine is paid immediately the same may be received by the judge, but after the expiration of twenty-four hours the only person who is entitled to collect the fine and release the prisoner is the sheriff of the county. See Section 6120, Revised General Statutes of Florida.

If a convict guard releases a prisoner without proper authority from the sheriff he is guilty of permitting an escape and may himself be arrested and prosecuted for such offense.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF HAS CLAIM FOR GUARD HIRE

May 14, 1928.

Dear Sir:

Answering your letter of May 9th, I beg to advise that in my opinion the sheriff has a legal claim against his county for guard hire incurred by him in the employment of guards to remain at the jail at night to look after convicts as required by the prison inspectors.

The item of guard hire for convicts is provided for in the sheriff's fee bill and it is the duty of the sheriff, in my opinion, to keep a man at the jail during the night hours in order to watch out for emergencies, such as fire, etc., and it would be criminal negligence for such sheriff to fail to do so and have a convict lose his life as a result of such negligence.

I would suggest that you take the matter up with the Board of County Commissioners and no doubt you will be able to work out some adjustment of the matter with them.

Cordially yours,

FRED H. DAVIS, Attorney General.

ELECTION—INSPECTORS AND CLERKS, POWERS AND DUTIES

May 21, 1928.

Dear Sir:

I have your inquiry of May 17th, in which you ask my opinion as to whether the inspectors and clerks of an election have the authority to swear in assistants to mark their tickets other than the duly authorized clerks and inspectors appointed by the Commissioners; said assistants to go into booths and mark ballots for voters who are entitled to assistance.

This matter is controlled by Sections 269 and 276, Revised General Statutes of Florida, which read as follows:

269. Public Excluded From Voting Place.—No person shall be permitted under any pretext whatever to come within fifteen feet of any door or window of any polling room from the opening of the polls until the completion of the count of the ballots and certificates of returns, except as herein provided.

276. Who May Have Assistance in Preparing Ballot.—Any elector applying to vote who by reason of blindness or the loss of the use of his hand or hands is unable to prepare his ballot, may have the assistance of the inspectors in the preparation of his ballot, who shall retire to a booth or compartment with the elector and there prepare the elector's ballot, so as to indicate the elector's declared choice of candidates as to each office to be filled without suggestion or interference from inspectors. But in all cases any elector before retiring to the booth as provided in this section may have one of the clerks of the election to read over to him the titles of the offices to be filled and the candidates therefor.

You will observe that Section 276, Revised General Statutes, says that when a voter is entitled to assistance in marking his ballot the assistance must be rendered by the inspectors (plural), who shall retire to a booth or compartment with the electors and there prepare the elector's ballot so as to indicate the elector's declared choice of candidates as to each office to be filled without suggestion or interference from the inspectors.

You will notice that at least two inspectors must participate in the marking of the voter's ballot and if possible all three of them should participate.

You will also notice that the clerk is only allowed to read over the ballot to the voter but is not authorized to mark the ballot for him.

I am of the opinion that it is absolutely prohibited by law for any other than the inspectors acting together to mark the ballots of voters who are entitled to assistance.

I am further of the opinion that it is against the law for only one inspec-

tor to mark such ballot. The law requires that all of the inspectors or a majority of them perform this duty.

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—QUALIFICATIONS

June 1, 1928.

Dear Sir:

Persons whose names appear on the registration books as registered voters who have paid their poll taxes as required by law are entitled to vote in the precinct in which they are registered.

It is the duty of the county commissioners and the supervisor of registration to cut off names of people who have moved away from the county and the fact that such has not been done is evidence that such persons are still entitled to vote whereas they are registered even though they might be away from the county on business or otherwise, temporarily.

In regard to age qualification, if a person has registered and sworn that he is 21 years of age he is entitled to vote subject to a prosecution by any interested party for the commission of perjury.

The election officials of any precinct have the right to require a voter to produce his registration certificate or poll tax receipt whether there is anything on the books to the effect that such voter is not a legally qualified voter. The law requires the books to be so marked as to show whether the person has paid his poll taxes within the time required by law and if there is any doubt as to whether or not the voter has done so the precinct managers have the right to require the voter to submit evidence by showing his poll tax receipt to prove that he is qualified.

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY LAW; POWERS OF CERTAIN OFFICERS, ETC.

June 21, 1928.

Dear Sir:

1. The Primary Law requires that a person must be a duly registered and qualified elector before he can become a candidate for office in Florida.

2. There is no law prohibiting an attorney from serving as a bondsman for a county judge but such practice might bring the judge into criticism with the public and would appear to be contrary to the ethics of the legal profession.

3. The sheriff is in exclusive charge of all persons lawfully committed to the county jail and no one has any right to take charge of such prisoners without the knowledge or consent of the sheriff or some lawful deputy.

The judge of a court having jurisdiction of the prisoner has a right to require the prisoner to be brought before his court and when he desires to exercise this power he should issue an order to the sheriff, requiring the production of the body of the prisoner in court.

4. There is nothing in the laws of Florida which requires witnesses to a marriage. These witnesses are required as a matter of form but there is nothing in the laws of Florida which makes them necessary or essential. Accordingly, there is nothing in the law to prohibit the county judge from

performing a marriage behind closed doors and later coming out and getting someone to sign the marriage certificate as witnessing a wedding, although any person could not sign a document as a witness unless he actually saw or was a witness to the fact.

I think, however, that in the case of a marriage a person might lawfully sign as a witness to the marriage, even though not personally present thereat if the contracting parties to the marriage acknowledged in the presence of such witnesses that they had in fact entered into the matrimonial state.

Trusting this answers your inquiry of June 12th, which has been delayed due to my absence from the city, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

CANDIDATES—FILING FEES—AUTHORITY TO RETURN UNUSED PORTION.

July 13, 1928.

Dear Sir:

In reply to your letter of July 9, I beg to quote you a letter written by Hon. T. F. West, former Attorney General, which will give you the information requested:

Candidates for nomination for an office to be voted for wholly within a single county pay this filing fee to the Clerk of the Circuit Court of the county, who receives the same in his capacity as clerk of the Board of County Commissioners of said county.

Since the expenses of the primary election are paid from public funds, my understanding of the purpose of this law was to provide a fund sufficient to take care of this expense. It happens in your case that the amount was greater than was necessary for this purpose, but it was not, in my opinion, the intention of the Legislature that any excess of this fund be returned to those paying it into the treasury.

The only way for returning it to those paying it would be by warrants drawn by the Board of County Commissioners in the usual manner of paying out public funds, and there is nothing in the law to forbid this being done and the County Commissioners probably have the power to do it, but as I have said, my opinion is that this was not the intention of the Legislature when the law was enacted any more than it was their intention that the Legislature should, by appropriation for that purpose, return to the candidate for other offices any excess remaining in this fund after the expenses of the primary, which are paid from the State Treasury, have been met.

Trusting this answers your inquiry, I am, with kind regards,

Yours very truly,

FRED H. DAVIS, Attorney General.

SHERIFF—WHEN DISQUALIFIED

August 6, 1928.

Dear Sir:

Under the common law when a sheriff is an interested party to the trial of a case, such as he would be if he were a complaining witness against

a man charged with an assault upon him, he is disqualified to select the jury venire who are to try the case and in such case the court should appoint a justice of the peace to perform the functions of the sheriff.

Trusting this answers your inquiry, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BOND—HOW BONDSMEN MAY BE RELIEVED.

August 6, 1928.

Dear Sir:

Answering your letter of July 31st, I beg to advise that apparently the only way you can handle the situation you mentioned is to have the State Board of Pardons, which meets September 13th, relieve the bondsmen from the payment of the bond in question upon payment of the costs.

The Court has no authority to remit a fine of this character after a bond for same has once been given as that would be an exercise of the pardoning power. See *Tanner vs. Wiggins*, 54 Fla. 203.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF'S COSTS—EXTRADITION CASES.

August 20, 1928.

Dear Sir:

When a sheriff of this State, armed with a proper requisition, appointing him as agent of the State, to convey a prisoner back to this jurisdiction for trial on a criminal offense duly charged against him in this State, goes out of the State for the purpose of apprehending and bringing back the prisoner named in the requisition, I am of the opinion that he is entitled to his mileage and other proper costs from the State to the point where the prisoner is held and returned—even though the prisoner should give bond in the asylum state or through no fault of the sheriff should be released for *habeas corpus* proceedings or otherwise in the asylum state.

The right of the sheriff to compensation is not made to depend upon the success of the sheriff in securing the actual return of the prisoner to this State in his custody. When the sheriff in good faith performs the services demanded of him in executing a proper requisition, such sheriff has earned his compensation and should be paid the same without question.

Trusting this answers your letter of the 17th inst., I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLE LICENSE TAX—NON-RESIDENTS

September 1, 1928.

Dear Sir:

The laws of Florida provide for exempting a non-resident from the payment of a license tax on automobiles in this State for such period of time as his foreign tag is good for, provided he does not engage in any business or occupation in Florida.

Therefore, while a man has a right to come here from Alabama or Georgia and run his car on an Alabama or Georgia tag as long as the Ala-

bama or Georgia tag is good, the minute he takes up an occupation in Florida he becomes liable to the Florida law and must take out an automobile license in Florida.

While this may seem a hardship, it is, nevertheless, the law and I know of no way to change it except through the Legislature.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF'S FEES—COPY OF PROCESS—100 WORDS OR LESS.

October 5, 1928.

Dear Madam:

I find that the matter inquired about by you under date of October 2nd is covered by letter dated February 21, 1925, written by former Attorney General Rivers H. Buford, now a justice of the Supreme Court, to Sheriff W. H. Dowling, Jacksonville, Fla., in which Mr. Buford held that the only fees sheriffs were entitled to receive in the case of non-service of civil process is the fee allowed by law for making a return on the process.

In a letter dated February 19th, 1925, addressed to Sheriff Dowling, former Attorney General Buford called attention to the fact that no copy of process is necessary unless service is made and therefore since no copy was necessary none can be charged for where service of process was not made.

I concur in these opinions rendered by former Attorney General Buford and answer your question, stating that I do not believe that the sheriff of Dade county is entitled to a fee of 25 cents for copy of process in any case in which the defendant is not served.

The only fee provided by law in the case where defendant is not served is the fee provided by law for making a return on the process.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF—PAYMENT OF COST BILLS BY COUNTY COMMISSIONERS.

September 7, 1928.

Dear Sir:

Answering your letter of September 4th, I beg to advise that a writ of mandamus would lie to compel the payment of properly incurred cost bills which are due you by your county but as a matter of fact if the county has no funds with which to pay the bills, the writ of mandamus would not be effectual as the writ could not provide funds when none existed.

You might also reduce your claim to a judgment against the county, in which event you would be entitled to receive eight (8) percent interest on the amount of the judgment until it was paid.

As to the transfer of funds from the county fine and forfeiture fund, you will understand that such transfers are only made upon the approval of the Comptroller and perhaps if you took the matter up with the Comptroller he would refuse to permit such transfer unless there was a sufficient surplus to warrant the payment of judgment until after all claims made against the fine and forfeiture fund were paid.

Trusting this information will be of value to you, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF—WHEN COMMISSION EXPIRES

October 19, 1928.

Dear Sir:

Your appointment as sheriff will expire on November 6th, when the next General Election is held.

However, the appointment of your successor will not begin until January 8th, 1929.

Unless someone is specially voted on as a candidate for the short term, running from November to January, you will continue to hold office as sheriff until January 8th even though your own commission expires on November 6th. The Supreme Court has so held because of the constitutional provision which says that officers shall continue to hold office after their terms expire until their successors are elected and qualified.

Very truly yours,

FRED H. DAVIS, Attorney General.

SHERIFF'S FEES

December 1, 1928.

Dear Sir:

Answering your inquiry of November 27th, I beg to advise that the fee of twenty (20c) cents allowed for calling the jury is a fee of 20 cents for calling a jury of six (6) or twelve (12) men, and the 20 cents is not applicable to each single juror.

I find this has been the generally accepted interpretation of the law on the case.

Very truly yours,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS—QUALIFICATION FOR OFFICE

December 6th, 1928.

Dear Sir:

Paragraph 5 of Section 396, Revised General Statutes, provides that every office shall be deemed vacant on the neglect or refusal of any officer to qualify according to law 60 days after his election or appointment or by his refusal to accept the office.

Under this provision of the law as construed by the Supreme Court in 65th Florida 434, it will be necessary for you to take the oath of office, sign the acceptance of office and file an approved bond with the Comptroller not later than 60 days after November 6th, the date of the last general election, which will expire on midnight of January 5th. If you fail to do any of these things your office will be vacant and the Governor will have to appoint a successor to hold office until the general election in 1930.

In the holding of the Supreme Court no exception is made in favor of any officer from the requirement to qualify within 60 days after the election and it would appear that even the Governor elected to take office on January 8th, 1929, will have to qualify for his office some time before the expiration of these 60 days if he wishes to qualify under the ruling of the Supreme Court in the case referred to.

My advice is to have your bond approved so that it may be duly filed not later than January 5th, with the Comptroller, and if necessary the County

Commissioners should hold a special meeting for that purpose or a majority of the Commissioners should endorse their approval upon the bond itself.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SUPERVISORS OF REGISTRATION

SUPERVISOR OF REGISTRATION—PREREQUISITE FOR BECOMING CANDIDATE FOR OTHER OFFICE

October 12, 1927.

Dear Sir:

I have your letter of the 11th inst., advising that you are the supervisor of registration for Bradford county and that you wish to run for another office in the June primary, 1928, in which letter you wish to be advised if it will be necessary for you to resign six months before the date of the election or six months before the date of your qualification as such candidate.

Section 326, Revised General Statutes, provides that every candidate for nomination to any office shall be required to take, sign and subscribe to an oath or affirmation in which he shall state among other things that he is qualified under the Constitution and laws of Florida to hold the office for which he desires to be nominated.

In the case of *State v. Haskell*, 72 Fla. 176, 72 So. 651, the Supreme Court of Florida, in construing this provision of the above quoted statute, said:

Section 22 c, 6469, provides that every candidate for nomination to any office shall make oath that, among other requirements, 'he is qualified under the Constitution and laws of Florida to hold the office for which he desires to be nominated.' This provision makes the part of the prescribed oath 'that he is qualified' mean that he has the qualifications for the office to be made applicable when elected and the term of office given.

The latter clause of Section 223, Revised General Statutes, reads as follows:

The Supervisor of Registration shall not be eligible for any other office until six months after ceasing to be such supervisor.

The evident purpose of the quoted provision of this statute was, and is, to prohibit a supervisor of registration from acting as such in connection with an election—either primary or general—in which he is a candidate for any other office.

Entertaining this view of the law, it is my opinion that the safest course to pursue would be to resign the office of supervisor of registration at least six months prior to the date of the primary in which you may be a candidate for another office.

You understand, of course, that this opinion is merely advisory.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
ELECTIONS—QUALIFICATIONS FOR VOTING.

December 22, 1927.

Dear Sir:

Your letter of December 15th, relative to qualifications for voting in this State, has come to my attention since my return to the city.

I can best answer your question by quoting from the first two paragraphs of a letter written by me on November 18th to another interested party concerning this identical question:

Section 215 of the Revised General Statutes of Florida, as amended by Chapter 8583, Acts of 1921, provides that every person of the age of twenty-one years and upward who shall at the time of registration be a citizen of the United States and shall have resided in Florida for one year and in the county for six months shall, if otherwise qualified according to law in such county be deemed a qualified elector at all elections under the Constitution.

Under this section it is necessary that the voter be twenty-one years old at the time of registration in order to be a qualified elector. In some counties the law has been otherwise construed and persons have been allowed to register to vote and have voted in the primary election on the theory that if they become twenty-one years old before the general election that they were thereby qualified voters. However, this is very questionable and I would not be prepared to give it as my opinion that such can be done in view of the present state of the law.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—EXEMPTION.

February 13, 1928.

Dear Sir:

Replying to your communication of the 11th inst., I beg to advise that Section 57 of Chapter 8502, Acts of 1921, reads as follows:

Sec. 57. Exemption from Poll Tax, Street Tax and Jury Duty; Certificate to be Furnished: Every officer and enlisted man of the Florida National Guard shall be exempt from poll tax, road duty, street tax and jury duty during his active membership, any local or special laws to the contrary, notwithstanding. The commanding officer of each company, troop, battery, or other similar organization, shall furnish each member of his command applying for the same such certificate of membership as may be prescribed by the Adjutant General, signed by such commanding officer, which certificate shall be accepted by any court as proof of exemption as provided by this section. Such certificate shall be revoked whenever the holder is absent from four consecutive formations without satisfactory excuse and shall be good only for the calendar month within which it bears date. The commanding officer of a division, brigade, regiment, or separate battalion shall issue a similar certificate to each of his field officers commissioned and enlisted staff.

You will note that this section fully exempts officers and members of the Florida National Guard from the payment of a poll tax when a cer-

tificate is presented, showing that they are members of such National Guard and are in regular attendance upon the same.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—PAYMENT BY PERSON JUST NATURALIZED.

February 10, 1928.

Dear Madam:

I wish to acknowledge the receipt of your letter of February 3rd, asking that I give my opinion on the question of whether or not a foreign born person who has just become naturalized should pay poll taxes the first year after receiving his naturalization papers.

Section 708, Revised General Statutes, as amended by Chapter 8585, Acts of 1921, provides that a poll tax of \$1.00 shall be levied upon each person over the age of 21 years and under the age of 55 years, who has resided in this State more than one year except such as have lost a limb or who have become disabled in the army or naval service.

It will be noted that the assessment of the poll tax is not confined to persons who vote nor even to citizens of the State of Florida, but it is collectable against any person who has resided in the State of Florida for more than one year, except those omitted from the provisions of the Section.

I am, therefore, of the opinion that a foreign born person who has just become naturalized should pay his poll taxes the first year after receiving naturalization papers, as there is nothing in the law to exempt him from payment of poll taxes, even though he had never received any naturalization papers at all.

This case is different from the case of a person who has just become 21 years of age, as persons below 21 years of age are not subject to poll taxes and consequently none may be required for a period of time when they are not subject to payment under the law.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTIONS—PUBLICATION OF LIST OF VOTERS IN.

February 16, 1928.

Dear Sir:

Section 244, Revised General Statutes, appears to govern the duty of the County Commissioners of each county with reference to examination and revision of registration books.

This section appears among the provisions regulating the conduct and holding of general elections and is not made specifically applicable to primary elections unless we consider that Section 362, Revised General Statutes, has the legal effect of adopting all provisions of the general election law as a part of the primary election law.

It has generally been considered that Section 244 was limited to general elections and was not mandatory in the case of primary elections. So far as I am advised it has never been followed in regard to primary elections. However, my individual opinion is that there is no reason why it should not apply to primary elections, as I believe that the effect of Section 362 is to adopt all provisions of the primary election law as a part of the gen-

eral election law of the State and I would advise that the County Commissioners carry out the provisions of Section 244 in regard to primary elections as much as with reference to general elections as a matter of precaution in following the law.

Trusting this answers your inquiry of the 7th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOKS—CLOSING.

March 7, 1928.

Dear Sir:

Replying to your letter of February 28th, it would seem that the registration books finally close for the coming primary election at midnight on April 30th, as the law provides that such books must remain open at the office of the Supervisor of Registration *between* the first Monday in April and May 1st.

Because of the use of the word "between," it would appear that May 1st is not included in the period.

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION—TRANSFER.

March 19, 1928.

Dear Sir:

This will acknowledge the receipt of your letter of March 14th.

Transfer of registration is governed by Section 243, Revised General Statutes, which provides that a transfer of registration shall be made upon the application of any voter entitled to the same and upon surrender of the previous registration certificate if one has been issued.

There is no time limit within which this must be done.

It appears that the same may be done at any time prior to the election where the facts warrant it.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAX—AGE

March 10, 1928.

Dear Sir:

Liability for the payment of poll tax is determined by the age the particular person is as of January 1st of the year for which poll tax is claimed.

The person who became twenty-one years of age after January 1st, 1927, would not be subject to a 1927 poll tax, but would be subject to a 1928 poll tax.

A person who became fifty-six years of age after January 1st, 1927, would still be subject to poll tax for the year 1927, but not 1928.

Trusting this answers your letter of March 6th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—EXEMPTION IN FAVOR OF DISABLED VETERANS

March 14, 1928.

Dear Sir:

I have your letter of March 9th, requesting my construction of that portion of Section 215, Revised General Statutes of Florida, as amended by

Chapter 8583, Acts of 1921, relative to exemption of persons from the payment of poll taxes who shall have become disabled in the U. S. Army or Navy Service and who shall have procured and shall exhibit a certificate of the Supervisor of Registration to that effect.

My opinion is that the question of disability is one for the Supervisor of Registration to decide, and it is not necessary that the disability be a total disability. The word used in the statute is "disabled" and such disability might consist of the loss of an eye or some injury of similar character which impairs the physical ability of the person so that it is below that of a normal individual.

The law seems to contemplate that a person who has been wounded or otherwise disabled in the Army or Navy service, whether disability be small or great so long as it is a permanent disability, shall be shown the consideration of the State to the extent of being exempt from the payment of poll taxes.

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION—QUALIFICATION FOR

March 15, 1926.

Dear Sir:

Your favor of the 13th inst., with reference to qualifications to register, received.

One would not have to be in Florida every day for twelve (12) months and in the county six (6) months, to be entitled to register. They would have to have *bona fide* established their home and residence in the State of Florida and have been so established for a period of twelve (12) months before they would be entitled to register.

The statute prescribes the oath necessary to be taken upon registration, and where one takes that oath it is presumed he has sworn truthfully and therefore entitled to register. If one should swear falsely in order to secure registration he would be subject to criminal prosecution. The law does not make it the duty of the Supervisor of Registration to pass upon the question as to whether or not the oath is true or false. If one applying to register is advised of the oath necessary and of the consequences to him, should he swear falsely that is as far as you would be warranted in going. If you personally know that anyone applying to register is not entitled to register, you might so state it to him and then let him take the consequences.

Very truly yours,

J. B. JOHNSON, Attorney General.

REGISTRATION—OATH REQUIRED

March 11, 1926.

Dear Sir:

Your favor of the 9th inst., with reference to persons qualified to register, received.

Anyone who is willing to take the following oath will be entitled to register:

I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of the State of Florida; that I am twenty-one years of age and have been a resident of the State of Florida for twelve months, and of this county for six months;

that I am a citizen of the United States, and that I am qualified to vote under the Constitution and laws of the State of Florida.

When anyone is willing to take this oath, it is up to you to allow them to register. If they swear falsely they will be subject to criminal prosecution for false swearing.

Very truly yours,

J. B. JOHNSON, Attorney General.

POLL TAXES—PAYMENT

March 12, 1928.

Dear Sir:

The payment of poll taxes for primary elections is governed by the provisions of Section 314, Revised General Statutes of Florida, which relates to primary elections.

Section 215, Revised General Statutes, as amended in 1921, relates to general elections.

It will be noted that Section 314 provides that the poll taxes must be paid on or before the second Saturday in the month preceding the day of the election, whereas Section 215 provides that poll taxes must be paid on or before the fourth Saturday preceding the day of the election.

In the case of *State vs. White*, 73 Fla. 426, the Supreme Court held that the word "month" means calendar month or that period of time elapsing between a given date and the corresponding date of the next preceding month by name.

Under the ruling of the Supreme Court the time must be computed upon the basis of that period intervening between May 5th and June 5th, the day of the primary.

The second Saturday occurring during this period appears to be May 19th, if we exclude May 5th from the date of calculation, as we must do in computing the period of time between the two dates.

I am, therefore, of the opinion that May 19th is the last day upon which poll tax can be paid for the next primary election under Section 314, Revised General Statutes of Florida.

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION OF WOMEN AS *FEME-SOLE*; PAYMENT OF POLL TAXES AS *FEME-COVERT*

March 16, 1928.

Dear Sir:

In talking with your brother, the chief of police, last night, I was requested to advise you concerning the proper method of handling the registration of women who registered as single women and who, since their first registration, have married, thereby changing their names.

It appears that much confusion is likely to result in connection with this subject.

When a woman registers under her name as a single person her registration must be carried on the books in that name notwithstanding the fact that she may marry and assume another name, in which she pays her poll taxes. There appears to be no authority for the Supervisor of Registration to change his registration books so as to show the married name of the woman in question. By this I do not mean that the woman may not vote merely because

she has since married, but in order for her to satisfy the inspectors that she is the identical person who, under another name registered, she should produce some evidence before the election officials such as a marriage certificate to show that her name has been changed and that she is the same person appearing on the registration books, as an unmarried woman.

To meet such a situation, my suggestion is that you advise all women who registered for the last primary as single women to forthwith register with you in their married names so that the registration books shall henceforth carry the proper name under which they intend to pay their poll taxes and vote. Unless this is done there is going to be a large amount of trouble occasioned on election day and possibly thereafter in reconciling names as they appear on the registration books and names as they appear on the poll lists.

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION—AGE.

April 12, 1928.

Dear Sir:

Your question of April 9th, inquiring as to whether or not all persons registering shall give their correct age in years is fully answered by the opinion rendered on March 1st, 1922, shortly after women became qualified to vote, in which Attorney General Buford, who is now a Supreme Court Justice of this State, held that such age must be given in all cases unless the registrant was able to show that his or her age was unknown to himself or herself, in which case it should be stated to the best of the registrant's knowledge and belief.

A copy of this opinion is herewith enclosed for your convenience, and I might add that in view of the fact that former Attorney General Buford is now a justice of the Supreme Court I think that his opinion is entitled to more than ordinary consideration.

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—LEGAL VOTING AGE.

April 18, 1928.

Dear Sir:

Section 312, Revised General Statutes of Florida, provides that any person, otherwise qualified who shall become of legal voting age between the date of the closing of the registration books and the holding of the primary election may upon personal appearance before the Supervisor of Registration make an affidavit containing the age on which he will have become of legal voting age and thereupon the supervisor shall register him.

Under this section a person who becomes twenty-one years of age in September, 1928, cannot lawfully register and vote in the primary of June 5th, 1928, but all those persons who will become twenty-one years of age on or before June 5th, 1928, even though not fully twenty-one years of age at the time of registration may under Section 312 register and vote in the coming primary.

Trusting this answers your letter of April 9th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—DECLARATION OF PARTY AFFILIATION BY REGISTRANT.

April 19, 1928.

Dear Sir:

The law mandatorily requires that registration for voting in the primary election shall show the party affiliation of the registrant.

The law does not require, nor is it proper for the general election registration books to show the party affiliation of registrants.

Any person who has registered in the primary election register should be required to show party affiliation, and unless the party affiliation is shown and such party affiliation is shown to be that the party is a Democrat, no person who is registered without party affiliation would be entitled to vote in the coming primary.

The only suggestion that I can make in regard to those who have been registered and no party affiliation declared up to this time is to endeavor to get the same declared by the registrants in the best manner possible and thereupon have the party affiliation properly inserted upon the books after the name of the registrant.

There is no way in which the Election Board on Election Day can in anywise amend the registration books or interfere with the manner of registration as shown by the books. That is a matter that will have to be attended to by the Supervisor of Registration, as he has the sole jurisdiction of such a case.

Proper entries in the registration books showing party affiliation are absolutely essential to the validity of the registration, and any person who was challenged because party affiliation is not shown would be refused the privilege of voting and would have no right to vote. You will understand that the theory of the law is that the question of what persons are Democrats and entitled to participate in the primary is to be determined by what is shown on the registration books and an affirmative declaration of party affiliation with the party holding the primary is absolutely essential for voting in such primary, which is a party matter and only those are entitled to participate therein who are members of the party holding the primary.

Trusting this answers your letter of April 14th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOKS—EXAMINATION—COPIES

April 21, 1928.

Dear Sir:

Section 322, Revised General Statutes of Florida, relating to primary elections, reads as follows:

County Registers Open to Inspection; Copies.—The said registers shall be public records. Every citizen shall be allowed to examine the general county register and each of the precinct registers, while they are in the custody of the supervisor of registration, but shall not be allowed to make copies or extracts therefrom. The supervisor of registration shall furnish copies of the names, occupations and residences of any electors upon payment to him of reasonable compensation therefor, not exceeding the customary fees for copying papers in

the office of the Clerk of the Circuit Court but shall not furnish in writing any other information contained in said registration books.

Section 313 authorizes tax collectors to take the registrations of persons who desire to register while paying their poll taxes, but the affidavits or affidavits so taken by the tax collector are to be delivered to the supervisor of registration and it is the duty of the supervisor of registration to register the name of the voter in the registration books:

In my opinion the effect of Section 313 is to make the tax collector *ex officio* a deputy supervisor of registration and all laws that govern the supervisor of registration in the custody and handling of the registration books I think apply to the tax collector insofar as the registration of voters is concerned.

It is generally said that the intent of a statute is the life of the statute and that laws should be construed to carry out the legislative intent. The intent of Section 322 is that the supervisor of registration, in view of the fact that his compensation is usually very limited, should be allowed to receive the benefit of any fees which may be made at election time by furnishing to candidates and others data obtained from the registration of electors.

Such intent will be defeated if the tax collector allows persons to make copies or extracts from registration affidavits taken by him before they are delivered to the supervisor of registration.

I am, therefore, of the opinion that the provision of Section 322 as to making the extracts from the registration books should be observed by tax collectors when taking registrations under Section 313 and I think that for the purpose of the law a tax collector should be regarded as being an *ex officio* deputy supervisor of registration, all records taken or made by the tax collector, acting as such *ex officio* deputy should be regarded as being property of and part of the official archives of the supervisor of registration's office.

Please understand that this opinion is given as a matter of information and is not in any sense an official one under the circumstances.

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION—VOTING PRECINCT.

April 27, 1928.

Dear Sir:

Paragraph 7 of Section 215, Revised General Statutes of Florida, as amended by Chapter 8583, Acts of 1921, not being in conflict with any provision of the Primary Election Law, is under Section 362, Revised General Statutes, made applicable to primary elections.

Such paragraph reads as follows:

No person shall be permitted to vote, or shall such vote be counted, unless the person registers to vote in the election district in which he or she shall have his or her permanent place of residence.

If a person has registered in a particular district and he removes from that district to another district, Section 243, Revised General Statutes of Florida, requires that he shall notify the Supervisor of Registration of his change of residence and shall surrender his certificate of registration and obtain a transfer certificate from the supervisor. This section also provides

that if the elector does not notify the supervisor of his removal of residence that the supervisor shall erase the registrant's name from the registration books.

Section 244, Revised General Statutes of Florida, authorizes the County Commissioners to go over the registration book and revise the same.

This section provides that the County Commissioners shall erase from the registration books the names of all persons who have removed from one district to another and who have not obtained a transfer of their registration to the district where they live.

The place where a person has his residence depends upon a question of fact, which, in case of a dispute should be determined by the County Commissioners under Section 244, Revised General Statutes.

If a person attempts to register or vote in a precinct or district other than that in which such person is entitled to vote his vote may be challenged and the voter required to take the oath provided by Section 347, Revised General Statutes, which you will notice requires that the voter must give his place of residence and must swear that the same is in the particular election precinct in which he is attempting to vote.

If a person offers to vote in a precinct in which he is registered but in which he does not reside, I think such vote is legal in the absence of a challenge of same, but if the same is properly challenged then such vote would be held to be in violation of the law and if a sufficient number of such votes were cast the election might be set aside.

The purpose of Section 347, Revised General Statutes of Florida, was to keep account of the number of votes which might be in dispute and to determine the identity of the particular voters whose right to vote is challenged.

I believe the law on the subject is sufficiently clear for the same to be understood and I am, therefore, sending copy of the Primary law. I trust that the information you desire is contained in said law and in this letter.

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION CERTIFICATES; EFFECT OF CHALLENGE ON ABSENT VOTERS' BALLOTS.

May 23, 1928.

Dear Sir:

I have your letter of May 22nd and in reply to the same I beg to call your attention to the opinion of former Attorney General J. B. Johnson, in which he holds that any person who goes before you and who is willing to take oath of registration provided for by law is entitled to register as a voter and that it is not within your province as Supervisor of Registration to undertake to pass upon the qualifications of such persons as to residence or otherwise.

This opinion is contained in a pamphlet formerly sent to you.

Section 235, Revised General Statutes of Florida, mandatorily requires that the Supervisor of Registration shall issue to each elector registered by him a registration certificate, which certificate shall be signed by the registration officer. This means that whenever a person registers such person is entitled to a registration certificate showing that he is registered and

the supervisor has no right to refuse or fail to give the voter such registration certificate.

Such registration certificate, however, confers upon the holder of same no greater rights than he is entitled to under the law. It is merely evidence of the fact that the holder has registered as a voter and, therefore, the fact that a person has a registration certificate will not prevent such person being challenged under Section 347, Revised General Statutes.

Now, as to the manner of challenge, Section 347 is clear as to the method to be pursued when a voter undertakes to vote on Election Day but the laws are not clear as to the proper method to be followed when a voter attempts to vote an Absent Voter's Ballot under Chapter 11824, Acts of 1927.

Construing the Absent Voter's Law, in connection with other provisions of the Primary Law, I am of the opinion that the proper method of challenging an absent voter is for the person who desires to interpose such challenge to file with the county judge notice of the fact that he challenges such vote, giving the name of the voter challenged. It is not necessary to give the ground for the challenge, as the statute says that it shall not be necessary for the elector entering the challenge to state any reason therefor.

It is the duty of the county judge to call the voter's attention to the fact that a challenge has been filed with him as against the absent voter's ballot and to allow such challenged voter to make the affidavit provided for by Section 347 and to file with him any other evidence which the voter may care to offer in support of his right to vote as against the challenge.

If the person interposing the challenge desires to offer any evidence in support of the challenge such evidence should be filed in writing with the county judge and placed in the same envelope with the absent voter's ballot.

It will then become the duty of the inspectors of election on election day to consider the challenge and the evidence offered for and against the same in writing and apply the provisions of Section 347 to the challenge in like manner as if the voter were personally present and voting.

I am further of the opinion that if a voter is not challenged at the time that he offers to vote before the county judge by filing a challenge with the county judge so as to allow the voter a chance to defend himself by offering evidence against the challenge and taking the oath provided for by Section 347, that such right to challenge is thereby waived.

Any other interpretation of the Absent Voter's Law will enable any voter to go down to the polls on election day and by the mere interposition of a challenge on a frivolous ground or otherwise defeat the application of Chapter 11824, Acts of 1927, without giving to the voter any remedy by which he could secure the benefits of Section 347 in the event of challenge.

Chapter 11824 certainly contemplates that the voter shall have the right to have his vote counted, even though he is out of the county on election day and there is nothing in Section 347 or any other part of the Primary Law which should be applied as to enable the voter's right under Chapter 11824 to be defeated by making it necessary for the voter to come back into the county on election day in order to defend himself against the challenge filed after he has left his vote with the county judge.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION LAWS—DUTY OF SUPERVISORS OF REGISTRATION.

July 16, 1928.

Gentlemen:

In view of the importance of the General Election to be held on November 6, 1928, and the fact that irregularities in the conduct and holding of the election may lead to litigation and controversy, also because of the fact that this being a presidential year and there being a United States senator as well as four congressmen to be elected that such irregularities, if any, might occasion a Federal controversy in the event the result of the election in any district should be close enough to warrant a contest, permit me to call your attention to some of the vital provisions of the election laws, and to request your co-operation in seeing that these provisions are carried out.

The chief responsibility for holding the election devolves primarily upon the Supervisor of Registration, who is required to work in conjunction with the County Commissioners. It is physically impossible for the Supervisor of Registration, among all the other things he is required to do, to do all the law requires of him in this connection without clerical assistance. In addition to this, Supervisors of Registration are, perhaps, the poorest paid of all other county officials, and their compensation will not warrant the employment of extra help to be paid out of the meager sum they receive for their services. The most essential thing at this time is the proper preparation of the registration books for the General Election.

Section 236, Revised General Statutes, provides that no person whose name does not appear upon the registration books shall be allowed to vote, except upon production of a restoration certificate in the event his name is improperly omitted.

Section 308, Revised General Statutes, and other sections and special laws, provide that while all persons who have registered for the Primary Election are to be deemed duly registered for the General Election, yet notwithstanding this fact, their names "shall be carried upon the registration books as electors duly registered for such election." This language clearly requires that all names be transferred from the Primary Election books to the General Election books unless the same names are already upon the General Election books.

There is no authority for the use of the Primary Election books as registration books for the General Election.

Owing to the heavy registration in the recent primary, the work of transferring these names to the General Election books will be enormous, and unless the same is accomplished the date of the General Election may arrive and many Democratic electors left ineligible to vote because their names do not appear upon the registration books. In many cases it will be impossible for them to procure the restoration certificate required by Section 236, because in many instances such electors will discover for the first time at the polls that their names are not upon the General Election books.

In order to enable the Supervisors of Registration to comply with the law, and in order to insure that each voter who voted in the last Primary Election will be allowed the right to vote in the General Election, I am writing this letter to suggest that the Board of County Commissioners

of the several counties of this State co-operate with the Supervisors of Registration in furnishing such clerical assistance as will enable the supervisors to carry out their part of the work as required by the law. For this purpose, it is my suggestion that the Board of County Commissioners use any surplus of the fund which may be in their hands from qualification fees paid in by candidates at the last primary to carry on the work of transferring primary registrants to the General Election books, as this is primarily chargeable to expenses of holding the primary, as I construe the law.

I would also suggest that particular attention be paid by Supervisors of Registration toward compliance with Section 227, Revised General Statutes, by giving the printed notice therein mentioned. Also the provisions relating to appointment of and giving notice by district registration officers, as well as the provisions of Section 244, Revised General Statutes, relating to examination and revision of the registration books by the County Commissioners.

I would also invite your attention to Section 238, Revised General Statutes, wherein it provides for new registration books where the old registration books are in such a condition that new ones are necessary.

In many instances it will be found that the most convenient way to handle the subject of registration for the approaching General Election is to prepare new registration books under Section 238, and in such new books carry forward only those voters who are known to be still in the county and entitled to vote at the coming General Election, eliminating the names of all persons who have moved away and who have died since the last General Election.

As I have stated above, the matter is of particular importance at this time, owing to the fact that Federal as well as State officers are to be elected, and in the event of controversy the question of compliance with the State laws may get into the Federal courts, or before one of the Houses of Congress, in the event the election of any of our presidential electors, senators or congressmen should be challenged.

Very respectfully,

FRED H. DAVIS, Attorney General.

PARTY AFFILIATION—MANNER OF APPLYING FOR APPLICATION FOR CHANGING

Dear Sir:

August 2, 1928.

Change of party affiliation is governed by Section 309, Revised General Statutes of Florida.

All this section requires is that application be made in writing at least 60 days before the date of any general primary. The law is silent as to whether or not application shall be made in person or sent in by mail, and I find nothing in the section which would prohibit you from accepting such applications when mailed in provided that you are convinced that they are signed by the identical elector by whom they purport to be signed.

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOKS—PREPARATION

Dear Sir:

August 14, 1928.

Answering your letter of August 10th, I beg to advise that the law

relating to the preparation of registration books requires that three (3) books be prepared for each precinct.

While this may not be necessary in small counties, yet the law applies to them the same as it does to others and I know of no way in which the law can be suspended in this respect.

My advice to the election officials has been that the election laws be strictly followed regardless of whether there is any apparent necessity or not as there are likely to be contests after the next general election such as we have not heretofore experienced in Florida.

The general election law under which we are functioning was passed fifty years ago and is out of date. I attempted to get it changed at the last session of the Legislature but my efforts were not successful.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOKS—GENERAL ELECTION.

August 15, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of August 13th, in reference to registration books to be used in the General Election in your county.

It must be understood that the Primary Election and the General Election are in no-wise connected with each other, except insofar as it is provided that the nominees of the primary shall have their names printed upon the General Election ticket and insofar as it is provided also that persons who register to vote in the primary shall be considered as registered voters for the General Election and their names carried on the books as such.

The complete repeal of the Primary Law would not in anywise operate to change the provisions of the General Election Law. Consequently, the General Election Law must be administered just exactly as if the Primary Election Law did not exist.

The General Election Law expressly requires that there shall be a certain set of books had and maintained for the General Election. The form of registration book provided for General Elections is entirely different from the form of registration book required for Primary Elections. For one thing, the party affiliation of the voter is not shown on the General Election book. Indeed, I believe it would be invalid to require that a registered voter for the General Election should be forced to declare his party affiliation as that would in effect require him to declare how he would vote in the General Election.

The General Election Law also provides that no one shall be allowed to vote in the General Election whose name is not on the General Election books. The question then arises as to how the supervisor is to get the names of persons who registered to vote in the primary but who did not register to vote in the General Election on to the General Election books.

The only way this can be done is to transfer such names from the Primary Election books to the General Election books, as the law expressly requires that the names of such persons shall be "carried" upon the General Election books as registered voters.

I am not unmindful of the fact that our election law is inconsistent and entirely out of date. In fact, we are operating under a General Election Law passed, as to some of its provisions, as early as 1845, but yet at the same time I see no way of escaping compliance with it except by getting it amended at the next session of the Legislature.

Owing to the great interest which will be taken in the next General Election, I have voluntarily taken occasion to send out to the various supervisors a letter calling attention to the provisions of the law relating to General Elections in order that there may be no occasions arising which will lead to a contest over the election.

I have no doubt that it will be clearly illegal to use the Primary Election books in the General Election and to use the same might result in throwing out the entire county's ballots.

The law requires that a poll list be kept of those who vote in the election and the law also provides that no one shall be permitted to vote who is not a registered voter according to the *General Election books*.

Let us suppose that in your county 3,000 people should vote in the General Election and that the names of these 3,000 people should be shown by the poll lists. Let us further suppose that, owing to the failure to transfer the names from the Primary Election to the General Election books, the names of 2,500 Democrats are not shown, insofar as the General Election books are concerned, to be registered voters at all for the General Election. You can readily see what are likely to be the consequences of such a situation.

I know that the work involved in making this transfer is enormous and in some counties almost impossible but at the same time the law is there and in the absence of some court decision to the effect that it can be disregarded, I see no way in which the matter can be remedied without legislative authority.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES, WHEN ASSESSABLE

April 3, 1928.

Dear Sir:

Answering your letter of March 26th, I beg to advise that poll taxes in Florida are assessable regardless of whether the person is a citizen of the State or whether he votes or not.

The law requires all persons over the age of twenty-one years and under the age of fifty-five years to pay such a poll tax.

A person coming from another State, therefore, after January 1st, 1926, and prior to January 1st, 1927, will be required to pay poll tax for the year 1927, regardless of whether or not on January 1st, 1927, the person in question had completed a sufficient residence in this State in order to entitle such person to register and vote.

The liability for poll tax is determined entirely by the age of the party rather than by his length of residence.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTOR—REGISTRATION OF

April 9, 1928.

Dear Sir:

Answering your request of this date for my opinion as to whether or not a man may lawfully register to vote in the coming primary on behalf of himself and his wife or other member of his family, I beg to advise that this matter is governed by Section 318, Revised General Statutes of Florida, which provides that the elector must "personally" appear in the office of the supervisor or deputy supervisor and, after being duly sworn must give certain information which is to be entered upon the books and, therefore, as you will see by paragraph 13 of said Section 318 the law requires that the person registering must:

* * * sign his name in the presence of the Supervisor of Registration, in the general registration book upon the same line where the preceding information is written, and the said supervisor shall then sign his own name upon the said line, and add any remarks required by law to be made appropriate thereto.

The law also requires that if for any reason a person is unable to mark his ballot or sign his name he must state why and the Supervisor of Registration shall enter upon the registration book such reasons.

The law also requires that if a person is unable to sign his name because of some physical infirmity, such as blindness or loss of limb, incapacitating him from writing, he (the Supervisor of Registration) shall so state the fact.

Another provision of Section 318 is that if a person is unable to write his name through illiteracy the Supervisor of Registration shall, in addition to entering that fact in the book shall enter as full a description of such person as possible, giving his height, approximate weight, color, complexion and color of eyes.

It will be noted that the obvious purpose of requiring the voter to appear in person before the registration officers and in requiring him to personally sign his name to the registration books, if he is able to write, is to enable the election officials to identify such person in the event such a question arises as to the identity at the polls.

I, therefore, advise that there is no authority of law for anyone to register on behalf of anyone else as the law mandatorily requires each person to register for himself.

Very truly yours,

FRED H. DAVIS, Attorney General.

JUNE PRIMARY—CLOSING THE POLLS.

April 10, 1928.

Dear Sir:

Referring to yours of April 6th, I beg to advise that under the statute the time for opening the polls for voting is 8 a.m., and the time for closing the polls is sundown.

The time at which sundown occurs is usually determined by reference to an almanac.

I do not think that the inspectors of election have any authority to prolong the voting time for any substantial period beyond sundown on election day, for if they have power to extend it beyond that allowed by law

they would have power to extend it a day as much as they would to extend it an hour. Accordingly, I would say that the polls should be closed in accordance with the law and a public notice of an intention to do this should be given widespread circulation prior to the day of the primary.

A previous letter sent in my name, dated April 7th, had reference to the time of closing the books and not to the time of closing the poll.

The above, I believe, answers yours of the 9th also.

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION OF FELON AFTER UNCONDITIONAL PARDON.

April 13, 1928.

Dear Sir:

I have your letter of April 10th, requesting my opinion upon the status of a person who has been convicted of a felony and confined in the State Prison, subsequently pardoned and who now seeks to register and qualify as an elector during the coming primary.

Under the laws of this State manslaughter is a felony and a person convicted of such felony is deprived of his rights of citizenship by virtue of such conviction and when sentenced to imprisonment loses both his citizenship and residence in the county when he begins to serve his sentence in the State Prison.

A pardon—if full and unconditional—has the legal effect of restoring the person to civil rights, entitling him to register and vote both in the primary and general elections. However, such pardon does not restore to the convict his former residence which was terminated by his conviction and imprisonment and accordingly if a person has been convicted of a felony, sentenced to serve a term in State Prison and actually has served such term in State Prison he has thereby lost his rights of citizenship and status of residence until such time as the same are reacquired in some lawful way.

The granting and acceptance of a full and unconditional pardon has the effect of restoring to such person the right of citizenship but the person has no right to register and vote in a particular primary unless subsequently to the date upon which the full and unconditional pardon was granted he has resided in the county for a period of six months or more prior to the date of registration.

The date from which the time of residence should be computed is the date upon which such person, after his release from prison actually began to reside in the county and the six months' period in question must be completed before registration as an elector as the statutes of the State require that a person must make oath to the effect that he has been a resident of the State of Florida for twelve (12) months and of the particular county six months at the time of registration.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—LAST DATE FOR PAYMENT OF.

April 21, 1928.

Dear Sir:

I have your letter of the 19th inst., asking if I have changed by opinion in regard to the payment of poll taxes in order to vote in the coming primary.

I beg to advise that I have not changed my opinion in this regard and that I believe payment of poll taxes can be made until May 19th.

I base my opinion upon the holding of the Supreme Court in the case of State vs. White, 73 Fla. 426, as well as two opinions written in the year 1920 by former Attorney General Van C. Swearingen.

There is some controversy on the question and county officers can be guided by their own county attorney if they wish and close time for payment of poll taxes on May 13th. This, however, shortens the right of electors by one week and I do not think this ruling should hold.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BALLOTS—TIME FOR PRINTING

April 27, 1928.

Dear Sir:

Referring to your letter of April 21st, I beg to advise that there is nothing in the law which will make it necessary for the County Commissioners to hold up the printing of the ballots of their several counties until after the time for the filing of the second campaign expense statement has been passed, which is eight days before election.

The law does say that if a man does not file such expense statement his name shall not be printed on the official ballot and in the event that the ballots had already been printed and any candidate failed to file his expense statements so as to thereby be disqualified, the fact that his name was already printed on the ballot would be a nullity and his nomination would be without authority of law and invalid.

The County Commissioners might handle the situation with regard to absent voters by printing a few of the official ballots, having thereon all the names of the candidates who are qualified on the 15th day before the election and in the event that some of them should later be disqualified such names could be cut off of the ballot and the remainder of the ballots printed for the general use in the election. In such case, any person who had voter an absentee ballot for some candidate who became disqualified would not have his vote for that particular candidate counted.

My suggestion is that if the County Commissioners desired to they may wait until after the time for filing the second campaign expense statement has expired before printing the ballots to be used in the county generally, but there is nothing in the law which will prohibit the County Commissioners from having a special pad of such ballots printed and bound, to be left in the County Judge's office 15 days before the primary in order that persons may use the same to vote an absentee ballot under the 1927 law.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

PARTY AFFILIATION—HOW CHANGE ACCOMPLISHED

May 23, 1928.

Dear Sir:

Except in those counties where persons are required to register biennially under Section 310, Revised General Statutes, no person who is already a

registered voter of the county has a right to change his party affiliation except in the manner provided by Section 309, Revised General Statutes, which requires that such person in order to change his party affiliation shall make application in writing, duly signed by him to the Supervisor of Registration at least 60 days before the day of the primary and upon such application being made, the Supervisor of Registration shall note the party affiliation upon the registration book and furnish to the person requesting the change a certificate showing such change.

Any person who is attempting to change his party affiliation by re-registering before the tax collector in a different party affiliation from that which his name is already registered on the books is not legally registered and is not entitled to vote under such changed party affiliation and he is subject to challenge under Section 347, Revised General Statutes, and when the facts are made to appear to the inspectors of election such inspectors should exclude such persons from voting under any party affiliation than that under which they originally registered.

Every voter has ample time to change his party affiliation and the 60-day period for so doing was deliberately fixed in order to prevent promiscuous changes just before the primary, thereby causing confusion in the holding of the election.

The remedy for the situation is for you to exclude from entry on your registration books any registration certificate taken before a tax collector where it appears from your records that such person is already registered in a different party affiliation.

You will understand that all persons who register before the tax collector must have their names entered upon the registration books by you after you receive from the tax collector the signed oaths provided for by Section 313, Revised General Statutes.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

BALLOT BOXES—OPENING.

June 22, 1928.

Dear Sir:

Where election inspectors have locked up the registration books of the county in the ballot boxes, sealed up by them, the only person having authority to order the ballot boxes to be opened is the circuit judge, who may issue a writ of mandamus to the clerks and inspectors commanding them to reassemble, open their own ballot box and make their returns in accordance with the law, which is that they shall lock into the ballot boxes only the ballots cast in the election.

I notice that you speak of having to have the registration books for the general election in November.

You will understand that under the law there is required to be kept two (2) sets of registration books: one for general and one for primary elections. It is unlawful to use the registration book prepared for primary elections for the general elections or to use the general election registration books for primary elections.

One election is purely a party matter and the other is a general elec-

tion, regardless of party. There is no authority to open the ballot boxes you referred to or to remove the ballots therefrom except for the purpose of correcting an error in returns and these ballots must remain locked up in the ballot boxes until after the next ensuing general election.

The County Commissioners should provide another set of ballot boxes for use in the general election as there is no authority to destroy or molest the ballots now in the ballot boxes until the next general election has been held.

The local attorneys are right in their advice to you that you have no right under any circumstances to open ballot boxes, even though same is done to remove papers placed in such ballot boxes without authority.

I do not think, however, that any serious question could be raised if, in order to obtain the registration books that you desired, you requested the inspectors and clerk of election to come to your office and in the presence of the public themselves open the ballot box and again lock and seal it after the registration books are removed, even though no court order for same has been issued. This is done in many cases throughout the State where the same thing happens year after year in spite of instructions given every year to precinct officers not to bungle up everything, including all pencils, bottles of ink, etc., and put them in the ballot box instead of giving them to the supervisor.

Trusting this information will be of assistance to you, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOKS—GENERAL ELECTION.

August 15, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of August 13th, in reference to registration books to be used in the General Election in your county.

It must be understood that the Primary Election and the General Election are in no-wise connected with each other, except insofar as it is provided that the nominees of the primary shall have their names printed upon the General Election ticket and insofar as it is provided also that persons who register to vote in the primary shall be considered as registered voters for the General Election and their names carried on the books as such.

The complete repeal of the Primary Law would not in anywise operate to change the provisions of the General Election Law. Consequently, the General Election Law must be administered just exactly as if the Primary Election Law did not exist.

The General Election Law expressly requires that there shall be a certain set of books had and maintained for the General Election. The form of registration book provided for General Elections is entirely different from the form of registration book required for Primary Elections. For one thing, the party affiliation of the voter is not shown on the General Election book. Indeed, I believe it would be invalid to require that a registered voter for the General Election should be forced to declare his party affiliation as that would in effect require him to declare how he would vote in the General Election.

The General Election law also provides that no one shall be allowed to vote in the General Election whose name is not on the General Election books. The question then arises as to how the supervisor is to get the names of persons who registered to vote in the primary but who did not register to vote in the General Election onto the General Election books.

The only way this can be done is to transfer such names from the Primary Election books to the General Election books, as the law expressly requires that the names of such persons shall be "carried" upon the General Election books as registered voters.

I am not unmindful of the fact that our election law is inconsistent and entirely out of date. In fact, we are operating under a General Election law passed, as to some of its provisions, as early as 1845, but yet at the same time I see no way of escaping compliance with it except by getting it amended at the next session of the Legislature.

Owing to the great interest which will be taken in the next General Election, I have voluntarily taken occasion to send out to the various supervisors a letter calling attention to the provisions of the law relating to General Elections in order that there may be no occasions arising which will lead to a contest over the election.

I have no doubt that it will be clearly illegal to use the Primary Election books in the General Election and to use the same might result in throwing out the entire county's ballots.

The law requires that a poll list be kept of those who vote in the election and the law also provides that no one shall be permitted to vote who is not a registered voter according to the *General Election books*.

Let us suppose that in your county 3,000 people should vote in the General Election and that the names of these 3,000 people should be shown by the poll lists. Let us further suppose that, owing to the failure to transfer the names from the Primary Election to the General Election books, the names of 2,500 Democrats are not shown, insofar as the General Election books are concerned, to be registered voters at all for the General Election. You can readily see what are likely to be the consequences of such a situation.

I know that the work involved in making this transfer is enormous and in some counties almost impossible but at the same time the law is there and in the absence of some court decision to the effect that it can be disregarded, I see no way in which the matter can be redeemed without legislative authority.

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION—REGISTRATION FOR—PAYMENT OF POLL TAXES.

Dear Madam:

August 29, 1928.

Section 227, Revised General Statutes, provides that the registration books for General Elections shall close on "the second Saturday of the month preceding the day in each year in which there is any General Election."

This period of time is computed by taking the period of one month immediately prior to November 5th and ascertaining the second Saturday, which occurs during that period. The second Saturday occurring during the period from October 5th to November 5th, is October 13th. This is

the last day for registration of electors for the General Election and is the date on which the district registration books will close.

The last day for paying poll taxes is the fourth Saturday preceding the day of election, which also falls on October 13th.

Trusting this answers your inquiry of the 27th inst., I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION—VOTERS—NEGROES

August 16, 1923.

Dear Sir:

Replying to your letter of August 14th, I beg to say that whether or not negroes will be allowed to vote in any primary would depend entirely upon the call of the executive committee of the party holding the primary. The primary law applies to all political parties, but Section 320, Revised General Statutes of Florida, authorizes the State executive committee to declare terms upon which electors may be deemed to be members of the party and, therefore, the executive committee of any political party may confine its memberships to the white race if it wishes to do so and in such cases only white electors could participate in the primary of such party. Every elector who registers under the law of the State of Florida should declare his party affiliation and the same should be entered upon the registration book as he declares it. The fact that a negro registers as a Democrat will give him no right to cast a ballot in a Democratic primary called to be held by the white Democratic voters of the State.

Yours very truly,

RIVERS BUFORD, Attorney General.

PRIMARY ELECTION—HOW EXPENSE TRANSFERRING NAMES FROM PRIMARY TO GENERAL ELECTION BOOKS SHOULD BE PAID

September 6, 1928.

Dear Sir:

Replying to your letter of September 4th, I beg to advise that I know of no way in which the State can pay the extra \$200 required for performing the work of transferring the names of voters who registered to vote in the primary to the General Election books.

This is an expense properly chargeable against the county.

I have previously indicated that I thought that this extra expense could be paid for out of the surplus funds received by the county from the qualification fees paid in by candidates to defray the expenses of the primary. Certainly, it is a part of the expense of holding the primary election and properly payable as such to perform the necessary legal acts which are required to qualify the primary election voter as a voter in the General Election.

It may be readily seen that the holding of the primary would be utterly worthless if all the voters who participated therein are disqualified from voting in the General Election, thereby upholding the results of the primary. It could scarcely be contended then that the expense of transferring names of primary registrants to the General Election books is not a proper expense to be paid out of the fees received for the express purpose of paying the expenses of holding the primary.

Regarding the other phase of your letter, you will understand that it is

not within my province to enforce compliance with the General Election law and that what I have said in regard to the same is purely voluntary on my part in an effort to see that the election is properly held and contests avoided afterwards.

If the county officials will decide that they want to take the responsibility of ignoring the law, that is up to them. I believe the County Commissioners will, when the matter is gone into more fully, extend the proper assistance in the matter, if you will take it up with them again.

Trusting this answers your letter of September 4th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION BOOK—NAMES TO BE TRANSFERRED

September 7, 1928.

Dear Madam:

Answering your letter of September 5th, I beg to advise that the book referred to as the "General County Register" is the general registration book of the county, and all you would have to do would be to see that said book is brought up to date by transferring whatever names are necessary to be transferred from the primary election books to this general county register.

The entire general registration books do not have to be copied every year. All that is necessary is that the new registrants shall be put on the general registration books—if their names are not already there.

Very truly yours,

FRED H. DAVIS, Attorney General.

QUALIFIED ELECTORS—PUBLICATION OF LIST OF BEFORE GENERAL ELECTION.

September 7, 1928.

Dear Sir:

I have your letter of September 5th, in which you ask my opinion as to whether or not it is mandatory to publish in a newspaper the list of qualified electors of the county as provided for by Section 231, Revised General Statutes of Florida.

In my opinion, the law requiring the publication in newspapers of the list of qualified electors for the General Election is mandatory.

Section 231 reads as follows:

The Supervisor of Registration of the several counties of this State shall have published within fourteen days after the second Saturday in the month preceding the day in which any general election is held, a certified list of the registered and qualified electors of each election district wherein such election shall be held.

While the word "newspaper" is not mentioned in this section, it is apparent that the publication in a newspaper is intended by the statute. This publication is required to be made in order that all persons in the county who desire to vote in the General Election may be able to see by reference to the newspaper whether or not they are properly carried on the books of the county as being registered and qualified to vote, and if not so carried to enable them to have the books corrected in the event any mistake or omissions have been made.

This requirement of the law has been on the statute books since 1895

and as far as I am advised the requirement has never been considered as being anything but mandatory.

While the law may be entirely unnecessary, it is nevertheless a statute of the State and I do not think that the validity of the election should be put in jeopardy by omitting to carry out its provisions.

As to the manner of publication that seems to be left up to the Supervisor of Registration. Apparently, he has the option to publish each precinct list separately and may publish the same in more than one newspaper as he may deem advisable or he may publish the qualified list in one precinct in one newspaper and the qualified list for one precinct in another newspaper.

Very truly yours,

FRED H. DAVIS, Attorney General.

QUALIFIED ELECTORS—PUBLICATION OF LIST OF BEFORE GENERAL ELECTION.

September 24, 1928.

Dear Sir:

Replying to yours of the 22nd inst., I beg to advise that Section 231, Revised General Statutes, requires that the Supervisors of Registration of the several counties of the State shall have published within fourteen (14) days after the second Saturday in the month preceding the day in which any General Election is held a certified list of the registered and qualified electors of each election district wherein such election shall be held.

The second Saturday in the month preceding the day of the General Election this year will be October 13th. This list must be published within 14 days after October 13th, 1928, in order to comply with the statute.

Any publication of the list prior to such time is not a compliance with the statute and will not be legal. It will be necessary, therefore, to again publish the list as required by the statute.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

GENERAL ELECTION BALLOT—USE OF STICKERS CONTAINING NAME OF CANDIDATE PROHIBITED

October 5, 1928.

Dear Sir:

Answering your letter of October 2nd, I beg to advise that in my opinion it will be illegal to use stickers on the ballot to be used in the General Election held November 6th.

The law provides that blank lines shall be left on the ballot for the use of the voter in "filling in" the name of some other candidate than the name of candidate which is printed on the ballot. See Section 256, Revised General Statutes, as amended by Chapter 12038, Acts of 1927.

Section 275, Revised General Statutes, provides that the elector, when preparing his ballot, may exercise his franchise by "filling in" the name of the candidate of his choice in blank space provided therefor and making a cross (X) mark in the proper margin.

This "filling in" of the name of the person to be voted for can be accomplished either by writing the same with pen or pencil or by any other means or instrumentality such as a rubber stamp or device of that character which

will so operate as to "fill in" the name on the blank space provided on the ballot, but there is nothing in the statutes which expressly or impliedly authorizes the attaching to the ballot of some other piece of paper such as a sticker, which would not be a "filling in" of the name in the manner contemplated by Section 275.

I am, therefore, of the opinion that the use of stickers upon ballots in the General Election will invalidate such ballots at least as to the office for which the sticker is used and may invalidate the entire ballot if the Court should construe the use of a sticker as being a violation of the secrecy of the ballot by enabling the same to be identified because of the appearance of the sticker thereon.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

VOTING—ELIGIBILITY FOR

October 9, 1928.

Dear Madam:

The law provides that a person must have resided in the State of Florida for one year and in the county for six months before he or she is entitled to register and vote in the General Election.

A person who has not resided in the county for six months prior to the time he or she applies for registration is not entitled to register and vote in that county in the coming election.

Answering your second question, I beg to advise that under the General Election law, which is different from the primary law in this respect, a person must be twenty-one (21) years old at the time of registration. There is no provision in the General Election law which authorizes a person who will be twenty-one years old on the day of election to register, if not twenty-one years old at the time of registration.

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION BALLOT—ARRANGEMENT OF NAMES.

October 12, 1928.

Dear Sir:

Answering your letter of October 8th, I beg to advise that I have examined the form of ballot and that I am of the opinion that same is not in conformity with the statutes.

The law does not authorize printing on the ballot the party designation of the candidates, so you should eliminate from the form of the ballot the words "Democratic nominee," "Republican nominee," wherever they appear.

Section 264, Revised General Statutes, provides that the names may be printed on the ballot in one or more columns "in the same order as now." This section was amended in 1907 and the words "in the same order as now" evidently had reference to the arrangement of names provided for in Section 265, which was in effect at that time.

My advice is to follow the form laid down in Section 265 as closely as possible, i.e., have the names of all the candidates for one office printed in a single column, one under the other, in such arrangement as may be fixed by the County Commissioners.

What is meant by printing the names in one or more columns on the same ballot is that in order to prevent the ballot being extended to an undue length it may be made wider and shorter, i.e., there may two columns of offices to be voted for, arranged side by side instead of stringing them all out on a long ballot, one under the other.

I give you for example the following illustration of what I mean:

The ballot may be prepared either to read as follows—

FOR GOVERNOR

Vote for one:

DOYLE E. CARLTON

WILLIAM J. HOWEY

FOR SECRETARY OF STATE

Vote for one:

H. CLAY CRAWFORD

JOHN DOE

or the ballot may be arranged as follows:

FOR GOVERNOR

Vote for one:

DOYLE E. CARLTON

WILLIAM J. HOWEY

FOR SECRETARY OF STATE

Vote for one:

H. CLAY CROWFORD

JOHN DOE

In this arrangement you will notice that the ballot is printed in two or more columns but the names of candidates for the particular office are not separated in two or more columns.

I think it should be made plain to the electors in the coming election that there is a distinct difference between the manner of marking a General Election ballot from that provided for Primary Elections.

In Primary Elections, the cross (X) mark must be placed after the name of the candidate to be voted for, but in the General Election the cross (X) mark must be placed *before* the name of the candidate for whom it is desired to vote.

A great many courts hold that if the cross (X) mark is not placed as the statute directs, this is a form of identification of ballot which violates the secrecy of the ballot and, therefore, requires such improperly marked ballot to be rejected.

I do not undertake to say that the courts of this State will follow these rulings as to the rejection of an improperly marked ballot where the intention of the voter is otherwise made to appear, but my advice is that voters avoid any such question arising by marking the ballot properly as directed by the statute in the first instance and not take the risk of a judicial construction of the law, which may or may not save the voter's rights.

Very truly yours,

FRED H. DAVIS, Attorney General.

ELECTION—DUTY OF SUPERVISOR OF REGISTRATION—COUNTY COMMISSIONERS.

Dear Sir:

October 25, 1928.

Answering your letter of October 23rd, I beg to advise that the Supervisor of Registration is exactly what his name implies—that is, the officer of the county who is in general charge of conducting the election.

It is the duty of the Supervisor of Registration to make up the ballot boxes, see that they are delivered to the various precincts, and to receive such boxes and keep them in custody after the election is over. He is responsible also for seeing that the inspectors and clerks of election are properly instructed in regard to their duties, and to see that the law in regard to the manner of counting the votes and making the returns is properly carried out.

Answering your further question, I beg to advise that I find no statute expressly providing compensation for the county canvassing board for services in canvassing the returns of the election. At the same time, I find no law which would prohibit the County Commissioners from allowing a reasonable compensation for this service in connection with holding the election.

Trusting this answers your inquiries, I am,

Yours very truly,

J. B. JOHNSON, Attorney General.

TAX ASSESSORS.

TAX ASSESSOR—COMMISSIONS TO BE PAID BY COUNTY.

Dear Sir:

January 6, 1927.

Your favor of the 4th inst. has been received.

The commissions of the tax assessor are paid by the county under the provisions of Sections 797 and 799 of the Revised General Statutes. It appears that it was the intention of the law that all commissions paid to the tax assessor should be paid by the county or by the Board of County Commissioners. This would include all taxes for special districts.

In the Act creating the St. Lucie inlet district the Act did not provide how the commissions for the tax assessor should be paid.

Under the two sections of the Revised General Statutes above quoted it would appear that his commissions should be paid the same as his commissions on other assessments for county purposes. You will note by the statute that the commissions of both the assessor and collector are paid on the gross amount of all assessments and collections, including taxes for all purposes.

It is my opinion that it is the duty of the County Commissioners to audit and pay all of the commissions of the tax assessor unless in some special act, like the Everglades Drainage District and other drainage districts, it is specifically provided otherwise.

Very truly yours,

J. B. JOHNSON, Attorney General.

TAX ASSESSMENTS—HOW CERTAIN LANDS ARE TO BE ASSESSED.

Dear Sir:

February 10, 1927.

Your favor of the 8th inst., addressed to Hon. Rivers Buford, has been referred to me for answering.

Section 718 of the Revised General Statutes provides that lands outside of the incorporated cities and towns shall be assessed according to the government survey or according to description given in by the owner, regardless of whether the land is platted or not.

Section 719, Revised General Statutes, provides how platted lands in cities and towns shall be assessed. You would be authorized to assess platted lands outside of the corporate limits of the city or town as acreage.

Very truly yours,

J. B. JOHNSON, Attorney General.

TAXATION—CERTAIN BUILDINGS EXEMPT.

May 23, 1927.

Dear Sir:

Your favor of the 20th inst. has been received.

You would not be authorized to exempt buildings or property from taxation. All property should be taxed at its value as of the 1st day of January. If there were no buildings on the lot on the first day of January, then the buildings constructed during that tax year beginning January 1st would not be subject to taxation. It would be subject to assessment for the next succeeding year, however.

Very truly yours,

J. B. JOHNSON, Attorney General.

TAX ASSESSOR—WHEN COMMISSIONS AUTHORIZED TO BE PAID

June 13, 1927.

Dear Sir:

Your letter of June 9th, addressed to Hon. J. B. Johnson, will be answered by me as his successor.

The commissions of tax assessors are governed by Sections 797 and 799 of the Revised General Statutes of Florida.

Under Section 799 the county commissioners are not required to pay the last installment of commissions provided for until a report of errors and double assessments is approved by the county commissioners and a copy thereof filed with the Comptroller. The statute simply provides that these commissions "shall be payable" when such report is filed.

I am, therefore, of the opinion that while the county commissioners cannot be required to pay this last installment of tax assessor's commissions until the report of errors and double assessments is approved by the county commissioners and a copy filed with Comptroller that at the same time there is nothing in the law which would make it illegal for such county commissioners, in the exercise of their sound discretion in the premises, to advance a portion of this remaining installment to the tax assessor before the report of errors and double assessments was approved by the county commissioners and copy filed with the Comptroller.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION—IF CERTAIN LAND EXEMPT

December 3, 1927.

Dear Sir:

I have your letter of November 25th, inquiring as to whether a certain

280-acre tract of land deeded to the Southern College by Mr. E. T. Roux should be carried upon the tax roll as being exempt from taxation.

The matter you inquired about is governed by the third paragraph of Section 697 of the Revised General Statutes of Florida and by the opinion of the Supreme Court rendered in the case of *Rass vs. Hulvy*, 77 Fla. 74, which should be followed by you in disposing of this matter. You may find the Supreme Court opinion referred to in the office of the County Judge and no doubt you have a copy of the Revised General Statutes in your office.

Cordially yours,

FRED H. DAVIS, Attorney General.

TAXATION—CHARITABLE INSTITUTIONS EXEMPTED FROM
January 21, 1928.

Dear Sir:

The tax laws of Florida provide for the exemption from taxation of the lower stories of buildings of charitable and benevolent institutions necessarily using the upper stories for lodge rooms and other purposes and renting the ground floor, using the rents, issues or profits for the benefit of such charitable or benevolent association, as well as the ground floor of public libraries, the rents, issues and profits from which said ground floors are being used for the benefit of the libraries. See proviso to paragraph 3 of Section 697, Revised General Statutes of Florida.

It would, therefore, appear that if the organization you referred to in your letter of the 12th inst. as the Sisters of St. Joseph is an organization falling within the purview of the proviso to paragraph 3 of Section 697 of the Revised General Statutes of Florida such organization would be entitled to exemption from taxes of the ground floor of the building which they occupy.

The question of whether this organization is within the meaning and intent of the exception to the law is a question of fact, the primary decision of which rests with the tax assessor, who is required to determine whether or not the association is charitable or benevolent and whether or not the rents, issues and profits of the rented portion of the building are being used for charitable or benevolent purposes, which facts must form the basis of the exemptions contemplated and authorized by law.

I might say in passing that the proviso to paragraph 3 of Section 697 is undoubtedly ambiguous in its meaning when considered at first sight, but as the office of a proviso is to form an exception to what usually precedes the proviso, I construe the language of this paragraph, beginning with the word "Provided" as forming the exception to the rule laid down in the first part of paragraph 3.

As to exemptions from taxation as applied to educational institutions, see the opinion of the Supreme Court in the case of *Amos vs. Jacksonville Realty & Mortgage Co.*, 77 Fla. 403, 81 So. 534.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXES, DRAINAGE—ASSESSMENT

February 28, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of February 24th in further reference to the matter of assessment of drainage taxes. The assess-

ment of drainage tax was designed to be made according to the same legal subdivisions of the land which were used for making assessments for State and county taxes.

If you accept a return of the land for taxes for State and county purposes upon an acreage basis the same may be lawfully used to assess the drainage tax.

My previous letter had reference to relief from taxes already assessed upon lots and blocks, as to which I see no relief except through some action of the Legislature.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION—EXEMPTIONS TO HEAD OF FAMILY

February 29, 1928.

Dear Sir:

I have your request under date of February 27th for my opinion as to the proper application of the provisions of the Constitution, relating to exemption from taxation to the head of a family residing in this State of household goods and personal effects to the value of \$500.

I have carefully read the letter of Hon. Ernest Amos, dated January 10th, 1928, relating to the subject, and beg to advise that I fully concur in his interpretation of the Constitutional amendment of the law which applies to the case in question. My information is that previous Attorneys General have also placed the same construction upon the Constitutional provision, and indeed I do not see how anyone could construe it otherwise.

I might add that at the last session of the Legislature and at the session of the Legislature preceding the last Mr. Weeks of Holmes county attempted to get the Legislature to define mules, farming utensils, Ford automobiles, etc., as "household goods and personal effects" in order that same might be considered as being within the exemption. The bill passed the House of Representatives but died in the Senate without action.

The fact that a bill was introduced to amend an existing law indicates that Mr. Amos' construction of the amendment by itself is the only one that can be followed until some other definition than the ordinary one is adopted for the term "household goods and personal effects."

I return herewith the files in the matter.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION—MANNER OF ASSESSING SUBDIVIDED LANDS

March 6, 1928.

Dear Sir:

I have your letter of March 2nd, relating to the manner of assessing subdivided lands for taxation.

Your question is answered by the proviso to Section 718, Revised General Statutes of Florida, which says:

* * * That when private surveys of land or descriptions by metes and bounds have taken the place of governmental surveys, and the land is known, designated and described only by such private surveys or metes and bounds, the description in the assessment shall be made in accordance with such surveys or descriptions as recorded

in the office of the Clerk of the Circuit Court, or by reference to deed or record. * * *

When land is platted into a subdivision the recorded plat becomes a private survey of the lands in question and the lands may be assessed according to such plat.

I might call to your attention the fact that since the original tract of land has been properly subdivided any legal owner of a lot or block in a subdivision has the right to redeem such lot according to its description as shown by the recorded subdivision even though the tax certificate has been issued against the land as acreage, describing it according to sections and townships. See Section 2 of Chapter 7806, Acts of 1919, Laws of Florida.

The purpose of Section 2 was to authorize a man to redeem any part of land covered by an outstanding tax certificate where there was anything of record to furnish a description by which a part of the land could be identified. In the case to which you refer where land has been formerly described as acreage has since been subdivided and plat appears of record it is demonstrated that there is a legal means by which the redemption of lots and blocks embraced in the whole tract may be allowed.

Very truly yours,

FRED H. DAVIS, Attorney General.

REGISTRATION—PRECINCT

March 31, 1928.

Dear Sir:

Answering your letter of March 24th, I beg to advise that the law requires a person to register and vote in the precinct in which he or she has his or her permanent residence.

When residence is removed or ceases to exist it is the province of the Supervisor of Registration and the Board of County Commissioners to transfer the voter or remove his name from the registration books if he has left the county.

However, as long as the name is carried on the registration books as a qualified voter and the poll taxes are shown to be paid, and vote cast by the person in question should be received and counted when mailed in.

The presumption is that the person once properly and legally registered in a given place continues to be a legal voter of that place so long as the name remains upon the registration books unerasd or untransferred as provided by law for a change of residence.

There are many cases in Florida where married women who registered and voted in a particular place before marriage have retained their registration and voting precincts at their former voting places, and while I have grave doubts as to the legality of this practice—if challenged—there is certainly no objection to receiving and counting the votes so long as no challenge is interposed.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—EXEMPTIONS

April 11, 1928.

Dear Sir:

Section 708, Revised General Statutes of Florida, as amended by Chapter 8585, Acts of 1921, provides for the collection of a poll tax against all persons

over the age of 21 years and under the age of 55 years who have resided in this State more than one year except such as have lost a limb or have become disabled in the Army or Navy service, which tax shall be paid into the county school fund, etc.

Further exemptions are mentioned in Section 215, Revised General Statutes of Florida, as amended by Chapter 8583, Acts of 1921.

It seems that the words "except such as have lost a limb" when construed in connection with Section 708, as it existed before the amendment made by the 1921 law have the legal effect of exempting any person who has lost a limb, whether in war or not, from the payment of poll taxes.

Trusting this answers your inquiry of April 4th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

TAXES—DRAINAGE TAX LAW DOES NOT AFFECT

April 12, 1928.

Dear Sir:

Referring to your letter of March 28th, relating to the manner of assessing lands where a drainage certificate has been purchased and the State and county taxes unredeemed, I think the matter of assessing the State and county taxes is in nowise changed by anything that might be done under the drainage tax law, and that you should handle the matter of assessing the State and county taxes as if there were no drainage tax law in force. Likewise, in dealing with drainage taxes, you should handle these as if the law providing for State and county taxes were not in existence.

It seems that your impression as to the manner of proceeding as stated in your letter is correct.

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTIONS—PARTY AFFILIATIONS

April 17, 1928.

Dear Sir:

I beg to acknowledge the receipt of your letter of April 12th, requesting certain information in regard to designation of party affiliation on the registration books.

You will understand that insofar as the general election books are concerned a declaration of party affiliation is not required by the law and indeed it is illegal to show such party affiliations on the general registration books.

Our statutes relating to elections are divided into two parts—Sections 215-299 inclusive covering general elections and from Section 300, Revised General Statutes, on relates to primary elections.

Under Section 300, as amended by Chapter 8582, Acts of 1921, only certain parties which poll a certain percentage of votes are deemed political parties within the meaning of the Primary law. It is, therefore, necessary in order to determine who is eligible to vote in the primary elections to have a provision of law relating to party affiliations so that it may be determined by the stated party affiliation whether or not the person in question is entitled to vote in the primary.

Section 309, relating to change of party affiliations, is confined exclusively to primary elections, and since there is only one political party in Florida, viz., the Democratic party, which has polled the required percentage of votes in the State (except possibly in one or two counties) the change of party affiliations under Section 309 can only occur in a case where a person who has been registered to vote as a Democrat, in order to vote in the Democratic primary, desires to change to some other party.

You can readily see that if it were required that a person register his party affiliation in order to vote in the general election that such a requirement would in effect compel the voter to disclose how he voted and thereby the secrecy of the ballot would be violated.

I am not unmindful of the fact that there has been much confusion in the application of the law throughout this State and I know that many persons have been registered as Republicans and members of other parties, but I am sure that no one can gainsay the fact that Section 309 is a part of the Bryan Primary law and as such its only application is to primary elections held under the Bryan Primary law, which, as I have stated, are confined to only one party, viz., the Democratic party.

You will understand that in some of the counties of this State—possibly in your county—the Republican party polled sufficient votes to be considered as a political party for county purposes under Section 300, as amended. In such cases the Republican party would be required to hold a primary for county officers in like manner as the Democratic party, and any persons desiring to vote in such primary would have to register his party affiliation as a Republican.

Trusting this gives you the information you requested, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

CANDIDATES—PROHIBITED FROM GIVING CERTAIN PROMISES.

May 8, 1928.

Dear Sir:

Section 5918, Revised General Statutes of Florida, prohibits the promising to give or pay any money or anything of value directly or indirectly by any candidate in furtherance of his candidacy for nomination in the primary, except in the manner and for the purposes authorized by that section.

Any violation of this section is made a ground of disqualification for office and punishable by fine and imprisonment.

In my opinion this section prohibits the promise by a candidate to remit to the county or to anyone else any part of the legal compensation of the office to which he aspires.

Thus, it would be a violation of the law for a person to run for Justice of the Supreme Court and offer an inducement for his election thereto that he would serve for a less salary than the \$8,000 per annum fixed by law as the compensation for that office and position.

The same is true of other offices, both State and county.

The purpose of the Corrupt Practice Act was to prevent undue influence being brought to bear by candidates either upon other candidates or upon the electors.

I can hardly imagine a stronger example of undue influence than for

a candidate to promise or base his claim for office upon a promise to serve in such office if elected for less than the salary of same as fixed by law.

If such a practice were permitted a wealthy man might seek an office for some ulterior reason and obtain same by promising to serve in the office for no salary at all, thereby putting a poor man in a position where he would either have to withdraw from the race or undertake to overcome the undue influence exerted by such a promise.

The Corrupt Practice Act was patterned after acts in force in other states and such laws have been uniformly construed as prohibiting, on the ground of public policy, any promise by a candidate that if elected to office he will serve for less than the salary fixed by law therefor.

Trusting this answers your inquiry of May 2nd, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PLATS—REVOCATION OF.

June 6, 1928.

Dear Sir:

Answering your letter of the 29th ult. I beg to advise that I am of the opinion that the document entitled "Revocation of Plat" submitted with your letter, if properly acknowledged as a deed, can be recorded in the records of the county and when so recorded is a sufficient predicate upon which to change the manner of assessing taxes on State lands from a lot to an acreage basis.

If there is any defect in this at all it can be cured by special act of the Legislature, ratifying all plats which have been filed, having for their purpose revocation of plats where no intervening rights of third parties are interfered with.

I think the form of revocation which you submit is in legal form.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX EXEMPTION—TAX ASSESSOR TO DETERMINE WHO ENTITLED.

June 11, 1928.

Dear Sir:

Answering your letter of June 4th, I beg to advise that Section 9 of Article IX of the Constitution of Florida allows an exemption from taxation of \$500.

* * * to every person who has lost a limb or been disabled
in war or by misfortune * * *.

The statutes of Florida do not undertake to define the amount of disability which must exist in order to entitle the person to exemption authorized.

The question is, therefore, left to each tax assessor to determine for himself as a question of fact and I would suggest that inasmuch as the U. S. Government has prescribed the rule for determining disabilities of soldiers as a basis for claim upon Federal bounty that each tax assessor might adopt the same rule to be used by him in determining when disability exists.

In other words, where a claim of disability would be allowed by the U. S. Government as a claim against the government as a basis for Federal

bounty or Federal benefit, that such claim of disability be likewise allowed as an exemption from taxation under this section of the Constitution.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX ASSESSMENTS—PROCEDURE FOR CHANGING.

June 22, 1928.

Dear Sir:

Answering your letter of June 16th, I beg to advise that the owner of the land which has been platted into lots and blocks where no lots have been sold may return the same by his sworn return, giving description of his land by block only, omitting reference to the particular lots.

The taxes upon an acreage basis might then be assessed against the block as an entirety and no one could complain as the assessment would be the result of the owner's own tax return, about which he could not complain.

The only other remedy that I know of would be for a land-owner to file an amended plat, omitting his lot designations and simply showing his land by blocks only.

Streets and avenues shown upon a plat since 1925 are fee simple property of the county and cannot be changed by cancellation of plats.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION—CERTAIN PROPERTY EXEMPT.

July 19, 1928.

Dear Sir:

Answering your letter of July 14th, I beg to advise that under Section 1, of Article IX, of the Constitution of Florida, all property in this State is subject to taxation, except such property as may be exempted by law for educational purposes.

Section 697, Revised General Statutes, embraces a law which was passed to put into effect the contemplated exemption of Section 1, Article IX, of the Constitution. Under Section 697, only that property of educational institutions within this State "as shall be actually occupied and used by them solely for the purposes which they have been or may be organized" is exempt from taxation. I am, therefore, of the opinion that any property which has been left for school purposes of a school located in another state from the State of Florida is not exempt from taxation under Section 697, Revised General Statutes.

Yours very truly,

FRED H. DAVIS, Attorney General.

TAX ASSESSOR—SEMI-ANNUAL REPORTS.

July 19, 1928.

Dear Sir:

Answering your letter of June 21st, which came to my office while I was out of the city, I beg to give it as my opinion that the reports contemplated by Chapter 11954, should cover semi-annual periods beginning with January 1st, and July 1st, of each year.

The law says in Section 3, that at the expiration of each semi-annual period after this Act shall go into effect a sworn statement shall be made, etc. The first semi-annual period after the Act went into effect would be

the semi-annual period extending from July 1st, 1928, until January 1st, 1929. I think the term "semi-annual period" means that period which consists of the one-half of a calendar year. This construction of the Act makes the administration of same conform to the term of office of the elected officers who hold office for eight semi-annual periods.

Under Section 6, of Chapter 11954, no former law is repealed except insofar as the same comes in direct conflict with the 1927 law.

Under Section 4 of Chapter 11954, I think the first payment should be made on January 1st, 1929, as that period concludes the present term of office of officers who now hold their commissions.

Trusting this answers your inquiries, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

POLL TAXES—WHEN NECESSARY TO BE PAID BY PERSON OVER 55
YEARS OF AGE

July 21, 1928.

Dear Sir:

I have your letter of July 19.

A person over age may qualify to vote by registering with the tax collector after the time for general registration has closed, but before the time for paying poll taxes has closed, by waiving his or her exemption and paying their poll taxes as provided in Section 313.

Section 215 authorizes a registered voter to vote in the general election if he has paid his poll taxes for the two years next preceding the year in which the election is held, provided he pays such poll taxes on or before the fourth Saturday in the month preceding the day of the election.

Therefore, if a person who is over age desires to register before a tax collector, after the time for general registration has closed, he is required to pay the taxes provided for in Section 215.

The same rule would apply to persons becoming of age this year, or who have changed their residence from some other State to this State.

Yours very truly,

FRED H. DAVIS, Attorney General.

TIMBER—MISDEMEANOR TO REMOVE OR WORK FOR TURPENTINE
PURPOSES ON LAND SOLD FOR TAXES

September 10, 1928.

Dear Sir:

Section 5271, Revised General Statutes of Florida, makes it a misdemeanor punishable by fine of not more than \$1000 or imprisonment not exceeding one year, or both, for removing or working for turpentine or otherwise using timber on land which has been sold for taxes and upon which there shall be an unredeemed and outstanding tax sale certificate against such land, timber or turpentine privileges.

Section 5280 punishes by fine of not less than \$50 or imprisonment not more than six months, if at any time after six months from date of sale of such land, the former owner shall, or his agents or servants, take or use any of such timber or turpentine.

Trusting this answers your inquiry of the 6th, inst., I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX COLLECTORS.

TAX ASSESSOR—COMPENSATION OF ASSISTANT.

October 10, 1927.

Dear Sir:

We have your letter of the 17th inst., advising that you had asked for an assistant tax assessor whose salary was to have been paid out of the county funds, by the County Commissioners, and that you were informed that same would not be legal. The compensation of the county assessors of taxes is a percentage fixed by law and the county would not be authorized to pay an assistant assessor out of county funds in excess of the amount allowed you by law. In other words, your compensation is to cover all the work done in making the assessments as required by law.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

FREEHOLDER—DEFINITION.

October 31, 1927.

Dear Sir:

I have your letter of October 22nd, reading as follows:

For the purpose of taking affidavits of registration as authorized for the tax collector to do at the time individuals are paying their poll tax it is requested that you kindly furnish me with your opinion of what constitutes a freeholder under the law in order that notations of same may be made at the time of registration and the registration officer duly supplied with the same.

Many people holding contracts for the purchase of property on the installment plan claim to be freeholders, also women whose husbands own property and husband and wife who own property jointly claim they are freeholders.

I will very much appreciate your opinion in the premises.

A freeholder is one who owns land in fee or for life or for some indeterminate period. A freehold estate is defined as an estate of inheritance or for life in real property. In order to be a freeholder a person must have a property right in and title to real estate amounting to an estate of inheritance or for life or for an indeterminate period.

Thus, a wife living with her husband on land, the title to which is in the husband and which is occupied by them jointly as a family homestead, as well as a husband living with his wife on land occupied by both jointly as homestead and legal title to which is in her, are not freeholders.

A vendee of land in possession of such land under a contract made by the woman who sells this land to the vendee is a freeholder as well as a tenant by entirety. (Husband and wife holding property jointly as husband and wife.)

A person who owns a vested remainder in real estate is also a freeholder. Thus, a man who had sold another a 99-year lease on his property would remain a freeholder. Also the man to whom the 99-year lease was sold would be a freeholder. The holder of a lease for life on realty is a freeholder.

The foregoing definitions are taken from various decisions of the courts

of the country and I trust fully answer what you desired to know in your communication of October 22nd.

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—REAL ESTATE BROKERS

November 2, 1927.

Dear Sir:

So far as the collection of occupational licenses is concerned for real estate brokers under the Real Estate Brokers law, no change has been made to the law as it existed two years ago.

The 1927 law merely provided that before an occupational license could be issued, the tax collector should require the person applying for same to exhibit his permit from the State Real Estate Commission at Orlando, for which the new law charges him a fee of \$10.

However, the new law did not change the old occupational license requirements, and whatever you did last year should be done this year.

Trusting this answers your letter of October 31st, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

MORTICIANS—LICENSE

December 2, 1927.

Dear Sir:

An undertaker's license is required for each place of business maintained by the undertaker. If an undertaker has a place of business in several counties he will have to take out a license in each county in which he maintains a place of business, but the mere performance of occasional services outside of the county in which he is licensed would not render such undertaker subject to obtaining a license in such other county any more than a lawyer who has a case in an adjoining county has to take out a license in each adjoining county in which he practices.

Trusting this answers your letter of November 28th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ABSENT VOTERS LAW,—INTERPRETATION

March 7, 1928.

Dear Sir:

Replying to your letter of February 29th, asking my interpretation of Chapter 11824, Laws of Florida, relating to voting by absent voters.

The new law is very specific to the effect that the absent voter must apply in person to the County Judge of his or her home county, in the case of State and county elections and it is not a sufficient compliance with the law for a voter to appear before anyone else than the county judge of his or her home county. The Legislature, in making this provision, had in mind the fact that the County Judge could make an inquiry into the identification of a person who proposed to vote an absent voter's ballot and thereby prevent fraud being committed by voters or votes being cast by persons other than the voter himself, although in his name.

It was also intended to limit the privilege of voting an absent voter's ballot to those persons who spend enough of their time in Florida to at least

be here long enough to comply with the requirement of the statute in question. Not only did the Legislature not intend that persons in other States should be entitled to go before their judicial officers and cast their ballots and mail them in but they took specific precaution to prevent this being done by requiring that the voter go before the County Judge of his own home county.

I might add that this new law does not repeal the other Absent Voter's law which was in force at the last election and that the primary reason for passing this new law was to enable railroad engineers, conductors and trainmen to vote in advance of the election day when their duties required them to be away on election day under such circumstances that could not cast their vote under the other Absent Voter's law. Also, with regard to salesmen and other traveling persons similarly situated.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION LAW—CONSTRUCTION RELATIVE TO REGISTRATION

March 14, 1928.

Dear Sir:

My interpretation of the election law is that midnight of April 30th is the last day upon which persons can be lawfully registered to vote in the coming Primary Election under Section 312, Revised General Statutes.

Under Section 313, Revised General Statutes, persons are entitled to register before the tax collector when paying their poll taxes.

Under Section 314 persons are entitled to pay their poll taxes in order to vote in the primary at any time on or before the second Saturday in the month preceding the day of such election, which this year means May 19th.

Construing Sections 313 and 314 together, I am of the opinion that even after the registration books close as provided in Section 312, under Section 313 persons who pay their poll taxes on or before the second Saturday in the month preceding the day of the election are entitled to register before the tax collector.

The law seems to contemplate that the registration books shall stay open for the registration of voters whether they pay their poll taxes or not, but that after the date for closing the registration books for general registration voters may still be allowed to register upon condition that they pay their poll taxes within the time limited by Section 314 of the Revised General Statutes of Florida, which is on or before May 19th, 1928.

There is nothing in the statutes of Florida which would authorize the tax collector to so apply the provisions of Section 313 of the Revised General Statutes of Florida so as to defeat the purpose and intent of Section 314, which provides that no person shall be permitted to vote who fails to pay his poll taxes on or before the second Saturday in the month preceding the day of the election.

You should, therefore, discontinue receiving the registration of persons paying poll taxes after May 19th until after the Primary Election.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY LAW—REGISTRATION OF ELECTORS.

April 14, 1928.

Dear Sir:

Answering your letter of April 11th, I beg to advise that while the general provisions of the Primary Law (Section 312, Revised General Statutes), provided that the registration of voters shall cease at midnight of April 30th during the coming year, after which the registration books must close, nevertheless Section 313, Revised General Statutes of Florida, authorizes all persons desiring to register to do so when paying their poll taxes by taking and subscribing to an oath in writing before the tax collector, etc.

Section 314 authorizes a registered voter to vote if he has paid his poll taxes for the two years next preceding the year in which the election is held, provided he pays such poll taxes on or before the second Saturday in the month preceding the day of election.

Construing Sections 312, 313 and 314, together, I am of the opinion that even though the registration books have been closed pursuant to Section 312 any person may nevertheless register under Section 313, when paying poll taxes until and including the last day upon which poll taxes can be paid under Section 314 in order to entitle the person to vote but the tax collector is only authorized to register persons when paying their poll taxes.

Consequently, you have no authority to register a person who is over age or who is otherwise not subject to a poll tax after April 30th.

In permitting persons to register after April 30th and up until and including the second Saturday in the month preceding the day of election it seemed that the Legislature had in mind permitting a person to qualify to vote who would pay his poll tax within the time limited by Section 314, even though he had failed to do so during the time limited by Section 312, but for the convenience of the Supervisor of Registration in preparing his books the Legislature decided to make the voter pay his poll taxes before permitting him to register after the time for general registration had closed but before the time for paying poll taxes had closed.

I would also be inclined to construe the statutes as authorizing the registration of a person who is over age and otherwise not subject to the payment of the poll tax, provided such person would waive his exemption and pay his poll tax so as to authorize the tax collector to register him under Section 313.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION LAW—VIOLATIONS.

June 19, 1928.

Dear Sir:

Answering your letter of June 6th, I beg to advise that Section 5916, Revised General Statutes of Florida, provides as follows:

Any candidate who shall wilfully violate any provision of the Primary Election Law of this State shall, in addition to any punishment prescribed by law, forfeit any nomination he may have received at the Primary Election in reference to which such crime or offense is committed.

Section 5924 is a part of the General Election Law.

If the primary law is violated by other than the candidate himself, the candidate cannot be held liable unless it can be proved that he knew or assented to the violation under such circumstances as to make him a principal or accessory in the commission of the crime.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX COLLECTOR'S BOND.

Dear Sir:

August 15, 1928.

According to the amendment to Section 1569, made by Chapter 10033, Acts of 1925, it appears that the official bond of tax collectors is required to be fixed with reference to the amount of money likely to be in the custody of the collector at any one time.

It appears to me that if you never have on hand more than \$10,000 at any one time the County Commissioners might appropriately fix the bond at \$15,000 for your county instead of the usual \$30,000 bond. You will understand, however, that the amount of the bond must be fixed by the County Commissioners and approved by the Comptroller; and my suggestion is that you take the matter up with Mr. Amos to ascertain the amount of bond he would approve for not less than the regular amount.

It is usual to require a slight margin in excess of the amount of money that is usually on hand.

Trusting this answers your letter of August 11th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

GENERAL ELECTION LAW—CORRUPT PRACTICE ACT.

Dear Sir:

August 20, 1928.

Answering your letter of August 15th, in which you requested my opinion as to whether or not the provisions of the Corrupt Practice Act have any reference to activities of candidates in the General Election to be held November 6th, I beg to advise that it appears that the provisions of the Corrupt Practice Act are confined entirely to the activities of candidates in Primary Elections and that insofar as General Elections are concerned, it appears to be an open season for candidates to do what would otherwise be a violation of the Corrupt Practice Act.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—PAYMENT BY PERSONS OTHER THAN ONE LIABLE

Dear Sir:

October 4, 1928.

Section 5903, Revised General Statutes, makes it unlawful for any person or corporation to pay the poll tax of any other person or furnish the money to any other person for the purpose of paying any other person's poll tax.

The only exception to this is that person paying poll taxes for another shall at the same time pay the taxes assessed on the real and personal property belonging to the person as poll tax is being paid.

The tax collector, being an officer sworn to uphold the law, should not knowingly assist in its violation by accepting the poll taxes in violation of Section 5903.

The question of whether or not the law is being violated is up to the tax collector to determine from the evidence which he has before him.

If the tax collector has reason to believe from the way poll taxes are being paid through the mails and otherwise that a scheme is being worked to violate Section 5903, the tax collector has the power, and it is his duty, to prevent the accomplishment of the scheme by refusing to accept poll taxes which he has reason to believe are not being paid *bona fide* by the person against whom they are charged.

The law does not permit one person to pay another's poll taxes, as you will notice, but only permits it on condition that the person paying the poll tax shall pay all other taxes assessed against the individual whose poll tax he has paid.

This makes it the duty of the tax collector to collect all other taxes chargeable against the voter whose poll taxes are being paid by someone for him.

The statute is very peculiarly worded but it is apparent that the purpose of the Act was to prevent the furnishing of money by either corporations or individuals to pay poll taxes as a gratuity to the voter.

I would not care to express an opinion on the particular facts stated in your letter of September 3rd, except to say that I think that you were warranted under the circumstances in holding up acceptance of poll taxes received under the circumstances outlined in your letter until you could verify the fact of whether or not a scheme was being worked to evade the law.

Very truly yours,

FRED H. DAVIS, Attorney General.

LICENSE TAXES—DYE WORKS AND STEAM CLEANERS.

October 5, 1928.

Dear Sir:

In my opinion Section 883, Revised General Statutes, which prescribes the rate of license tax for dye works and steam cleaners is applicable to any person engaged in the general business which is ordinarily done by steam cleaners except where specific licenses for pressing clubs, dry cleaners, etc., are provided for by other sections of the statute.

The nature of the business done and not the technical name of the person transacting the business nor the instrumentalities used in transacting the business necessarily determine the application of the prescribed license.

The term "steam cleaners" at the time the statute was passed in 1907 is commonly understood to embrace the kind of business which is now being done by most ordinary pressing clubs. The fact that steam is no longer used in such clubs but other means of cleaning employed would not change the liability of the business for the same tax which was lawful heretofore since the method of taxation was changed.

I think cleaning and pressing clubs in cities and towns of 5,000 inhabitants and less should be licensed under Section 882, whether they employ gasoline or steam as a means of cleaning as the result accomplished is the same, regardless of whether steam or gasoline is used to accomplish it.

Very truly yours,

FRED H. DAVIS, Attorney General.

POLL TAXES—COMMISSION.

November 14, 1928.

Dear Sir:

Answering your letter of November 10th, I beg to advise that the commission of county tax collectors for collecting poll taxes is payable by the County Commissioners out of the general county funds.

While poll taxes become a part of the school fund of the county, the Constitution provides that the compensation of all county officers except school officers shall be paid out of the general county fund.

See Section 15, Article XII, Constitution of Florida.

Very truly yours,

FRED H. DAVIS, Attorney General.

CITY OFFICERS.

The following are a few of the opinions rendered by this office to City Officials in various cities of the State which may be of interest to the public generally:

PROBATION OFFICER—EXPENDITURES.

January 26, 1927.

Dear Sir:

In your letter of January 24th, you ask for my interpretation of Chapter 10640, Special Acts of the Legislature of 1925, with particular reference to the amount of money that can be spent by the probation officer as therein provided.

You further ask if it is my opinion that the sum of \$50 is all that can be spent for all purposes by the Juvenile Court.

The statute referred to provides that the actual expenses of the probation officer and his assistants incurred in the discharge of their duties, shall not exceed a total of \$50 per month and shall be paid by the County Commissioners of Hillsborough county. This has reference to the expenses of the probation officer and his assistants alone in the discharge of their duties and does not include the expenses of the juvenile court outside of the expenses incurred by the probation officer and his assistants in the performance of their duties as such.

The necessary equipment for the use of the probation officer and his assistants required to be furnished by the County Commissioners, automobile or automobiles furnished and the expense of the operation and upkeep of same shall be paid for by the County Commissioners out of the fine and forfeiture fund and shall not be included in the limit of \$50 per month allowed the probation officer and his assistants for the expenses incurred in the discharge of their duties as such officers.

This is my interpretation of that point of the statute referred to.

Very truly yours,

FRED H. DAVIS, Attorney General.

CITY COUNCIL—HOW VACANCIES FILLED.

June 22, 1927.

Dear Sir:

Replying to your letter of June 20th, asking me whether vacancies occurring between annual elections in a municipal council can be filled by vote

of the council itself or whether an election by the qualified voters is necessary.

You did not state whether or not your city is incorporated under the general law, or under a special charter. If your city has a special charter, the vacancy must be filled in the manner laid down in said charter, whatever manner that may be. As I am not advised as to whether or not it has a special charter, I cannot, of course, construe what the requirement would be in such event. On the other hand, if your city is organized under the general law, Section 1837 of the Revised General Statutes will govern, and this Section provides that the city or town council shall have full power to establish rules and regulations for the filling of all vacancies that may occur in the city or town government, and for such other municipal elections as may be authorized by law.

The above section of the law means that the town council shall pass an ordinance stating the manner any vacancy in the council shall be filled, and such ordinance may provide for the filling of such vacancy by the council itself, or on the other hand it may provide for holding a special election for that purpose.

If your city is incorporated under the general law, I am of the opinion that you may pass an ordinance if you have not already done so, providing that any vacancy in your council may be filled by the council itself. However, as I have stated, if you have a special charter you must follow the terms of that charter, whatever they may be.

Trusting that the above gives you the information desired, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

SEARCH WARRANTS—IF MAYOR AUTHORIZED TO ISSUE

July 7, 1927.

Dear Sir:

Answering your letter of July 6th, I beg to advise that I am of the opinion that the Mayor of a city or town in Florida has no authority to issue search warrants, unless such authority is contained in some special charter provision incorporating the city or town. As I do not know under what provisions your town is operating, I cannot advise you as to whether the Mayor of Port St. Joe would have the authority to issue a search warrant or not.

Section 3 of Chapter 9321, Acts of 1923, limits the rights to issue search warrants to Judges of Circuit Courts, any Court of Record, Criminal Court Judge, County Judge, or Justices of the Peace.

Trusting this letter will give you the information requested, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

FISH DEALERS—IF CITY AUTHORIZED TO IMPOSE LICENSE TAX

November 23, 1927.

Dear Sir:

I have before me your letter of November 21st, with reference to the power of the City of Palatka to impose a license tax against fish dealers, wholesale and retail, which is alleged to be illegal and violative of Section 1268 of the Revised General Statutes of Florida:

The repeal of general laws by local laws by implication is not favored,

and only clear expressions in Acts of the Legislature such as are incapable of being reconciled with each other will be construed to have accomplished the repeal of one law by another by implication. Especially is this true in view of the way local bills are handled in the Legislature—with scarcely any consideration.

I am, therefore, of the opinion that the provisions that you cite in your letter being Section 16 of Chapter 9875, Acts of 1923, are incapable of being construed as not in conflict with Section 1268 of the Revised General Statutes and that such section confers no power on the City of Palatka to abolish the exemptions provided for by Section 1268.

I base this conclusion upon my idea that the words:

* * * without regard to any limitation placed thereon by general law * * *

mean without any limitation as to amount placed thereon by general law and that the purpose of this provision in the charter of the City of Palatka was to limit the City of Palatka to charging 50 percent only of the State license taxes.

You state that Section 1268 of the Revised General Statutes contains a limitation placed by general law upon the power of the municipality to impose a license tax upon wholesale and retail fish dealers. On the contrary, it is rather a prohibition against the city imposing any license tax on a subject or field already occupied by State law.

In this connection, "limitation" is not synonymous with "prohibition" but refers merely to the amount of the tax and not to the ability to levy the tax.

The purpose of the Legislature in all measures relating to the fishing industry in this State as shown by legislative history of the fish laws has been one of regulation and control. People are intended to enjoy the benefit of State fish, except insofar as they are restrained by State regulations. In order to encourage the observance of regulations and to prevent excessive charges resting upon dealers in fish, it is provided in Section 1268 that so far as the occupation of wholesale and retail fish dealers is concerned only one license tax should be exacted, the proceeds of which should go to the Shell Fish Department to aid in the State's policy of supervision.

Trusting this gives you my views upon the matter and that the controversy between you and Capt. Hodges will be satisfactorily and amicably adjusted. I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

ROADWAYS—WHEN TITLE REVERTS TO ABUTTING LAND OWNERS.

Dear Sir:

January 21, 1928.

Your inquiry of January 19th, asking my advice as to the ownership of abandoned roadways opens up such a large field of inquiry that I can but briefly state a few general principles.

If the right-of-way of the old road was conveyed by deed to the county the title to the property remains in the county, notwithstanding the fact that the road has been abandoned, except that if there were a condition in the deed that the land should be used for road purposes the grantor or his successors in title would have the right to demand of the county a reconveyance of the property when it was abandoned for road purposes.

However, in a great many instances the right-of-way for roads in Florida consists of a mere easement over private lands for road purposes, in which event when the road is abandoned the title reverts to the owner of the adjoining land.

In the absence of any special deed or contract the presumption is that the abutting land owners own the fee simple title to the highway to the center of the road subject only to the public use of the highway for the purpose of traveling. Accordingly, when the public authorities abandon the use of the highway for travel, the land reverts to the abutting land owners. See *Ludlow vs. Cedar Keys*, 15 Fla. 306; *Geiger vs. Filor*, 8 Fla. 325; *Rawls vs. Tallahassee Hotel Co.*, 43 Fla. 288; *Florida Southern Railway Co. vs. Brown*, 23 Fla. 104.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

POLICE COURT JUDGE—DISQUALIFICATION.

January 23, 1928.

Dear Sir:

I have your letter of January 9th, asking my opinion as to whether or not the judge of a police court can be legally recused on account of prejudice.

The matter in question was before the Circuit Court of Hillsborough county in a suit in which a writ of prohibition was issued against Municipal Judge Leo Stalnaker of Tampa. Circuit Judge Parks in that case ruled that there was no method prescribed for disqualifying a police court judge. His ruling was appealed to the Supreme Court and the case is now pending on the docket of that court.

Personally, I think the decision of Judge Parks is clearly wrong. The laws of all the states contemplate a fair and impartial trial of the defendant. In considering what a fair and impartial trial was, as it involved due process of law, the Supreme Court of the United States recently declared in cases from Ohio that due process of law meant a trial before a judge who was not interested or prejudiced against the accused and the court declared unconstitutional trials held before magistrates in Ohio who were given a portion of the fines assessed by them as their compensation.

This case was based upon the general principles of the common law concerning what constitutes due process of law. On the same theory as that given by the Supreme Court of the United States I think that a police court judge, if, prejudiced, would not be an impartial judge and, therefore, would have no authority as judge to sit as judge in a case in which he is prejudiced.

The charter of Lake Worth says nothing about the disqualification of city judges yet undoubtedly a municipal judge could not try his son or brother on the ground of his relationship. It must, therefore, be considered in connection with the general provisions of law applicable to disqualification of judges in this State, which general provisions apply with equal force to judges of municipal courts.

In the absence of any express provision on the subject it would appear that the same appointing power which has authority to appoint a municipal judge for Lake Worth would have the power to appoint a special judge to

sit in place of a municipal judge of Lake Worth who might be disqualified in a particular case.

Trusting this answers your letter of January 19th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

PUBLIC LIBRARIES—WHO ENTITLED TO FREE USE

January 24, 1928.

Dear Sir:

I am of the opinion that under Sections 1876-80 the only persons who are legally entitled to free use of public libraries established under city laws are the "inhabitants" of the city or town in question.

By "inhabitants" is meant residents of the city or town who have their homes therein. While there is nothing in the law to prohibit the city or town authorities, pursuant to its powers, to make rules and regulations regarding the use of public libraries and to provide that said library shall be free to all persons who may care to use the same yet there does not appear to be any vested right to such free use so far as the statutes are concerned except in the specified "inhabitants."

A city or town partakes very much of the nature of an ordinary corporation insofar as such matters as public libraries and kindred institutions are concerned and it is well within the power of the city authorities to confine the use of these institutions to the contemplated inhabitants of the particular places without thereby being guilty of any discrimination against others who might be temporarily in the city or town but who are not legally entitled to insist upon the free legal use of such institution.

Trusting this answers your letter of the 20th, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

DEATH CERTIFICATE—WHO AUTHORIZED TO SIGN

February 3, 1928.

Dear Sir:

I have your letter of February 1st, asking my opinion as to what persons are competent to sign death certificates which are required by the Vital Statistics Law of Florida.

In the first place it will be noted that under Section 2075, Revised General Statutes of Florida, the certificate of death provided for is one required to be authenticated by the signature of any competent person who may be acquainted with the facts relating to the death.

However, when any physician has had any connection with the case or with the deceased prior to his death, Section 2076 provides that a death certificate shall be signed by a physician last in attendance on the deceased, which means that if there were any physician last in attendance upon the deceased such physician should sign a certificate, which certificate forms a part of the death certificate. If there were no physician last in attendance on the deceased, this certificate is, of course, not required.

From the very nature of the case the death certificate of the physician last in attendance on the deceased as mentioned in the statute must be signed by the person who is, or who assumes to be, such physician regardless of whether he or she was a regularly licensed physician or not.

I am, therefore, of the opinion that the only qualification required to sign a death certificate under Section 2076 is that the doctor signing the same should have been the person who, in the capacity of a physician, whether legally authorized to act in that capacity or not, last attended the deceased.

It is obvious that if someone, without being qualified to do so, undertook to attend a person who died and then signed a certificate of death, giving the alleged cause of death, this certificate would be the best means by which such incompetent or otherwise unauthorized person could be detected and brought to answer in the courts for having assumed to act in a capacity in which he had no right to act.

Trusting this answers your inquiry. I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PUGILISTIC EXHIBITS—WHEN AUTHORIZED.

April 14, 1928.

Dear Sir:

Pugilistic exhibits are prohibited by the laws of Florida, except when conducted under the auspices of the American Legion, National Guard or any athletic association of a college.

There is nothing whatever governing the holding of wrestling matches and accordingly the town may license such matches to be held in the town if it is desired to do so.

As to boxing matches, the town has no right to authorize anyone to conduct a pugilistic exhibition, except as permitted by Chapter 12213, Acts of 1927, which contains a provision to the effect that nothing contained in the law of the State of Florida "or municipal regulation shall be construed as applying to boxing matches held under the auspices of the American Legion, companies or attachments of the Florida National Guard, the Y. M. C. A. or any college which is a member of any recognized amateur athletic association, whether an admission fee is charged or not, provided that no prizefights shall be held for a national or international title."

Trusting this answers your inquiry of April 7th, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PRIMARY ELECTION LAW—VIOLATIONS.

June 15, 1928.

Dear Sir:

Answering yours of the 6th inst., I would suggest that you look up Sections 5886, 5896, 5931 and 5932, Revised General Statutes, which relate to the duties of officers at Primary Elections.

Drunkenness at the polls could be punished under Section 5472, Revised General Statutes.

Disturbance of an assembly would be punishable under Section 5448, Revised General Statutes.

I especially direct your attention to Section 5932, Revised General Statutes, which provides that it shall be the duty of the grand jury in each county at its first meeting after the holding of a Primary Election to make special investigation to determine whether or not there have been any viola-

tions of the provisions of the election law and if sufficient data is presented file indictments for the violations.

I presume this duty will be performed by the grand jury of your county when it next convenes and if you are apprehensive that the law has not been followed your remedy is to make your complaint before such grand jury.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX DEEDS—WHO AUTHORIZED TO ISSUE.

June 18, 1928.

Dear Sir:

Answering your letter of May 26th, I beg to advise that the Supreme Court of this State has held that a tax deed to the purchaser at a sale for city taxes is properly executed in the name of the State as grantor.

See Florida Savings Bank vs. Brittan, 20 Fla. 507, Stieff vs. Hartwell, 35 Fla. 606.

I am of the opinion that under the holdings of the Supreme Court above referred to construing Section 793, Revised General Statutes of Florida, that all tax deeds based on tax certificates issued by the town of Edgewater should be issued by the Clerk of the Circuit Court of the county as provided for by Section 793, but should be issued in the name of the town of Edgewater as grantor.

I do not think that you as City Clerk have any authority to issue a tax deed without some special authority for so doing.

Very truly yours,

FRED H. DAVIS, Attorney General.

MUNICIPAL BONDS—CLERK CIRCUIT COURT ENTITLED TO COMPENSATION FOR SIGNING.

July 2, 1928.

Dear Sir:

I have your letter of June 22nd in which you ask my opinion as to whether or not the Clerk of the Circuit Court is entitled to compensation for signing validated municipal bonds as required by Section 3300, Revised General Statutes, when considered in connection with Section 3084, Revised General Statutes, as applied to bonds issued in 1925 and 1926.

Section 3300 requires that the Clerk of the Circuit Court shall endorse the bonds as having been validated by a decree of the Circuit Court and such endorsement is made, by the statute, equivalent of a certified copy of the final decree of validation.

The uniform construction of this law throughout the State is that the Clerk of the Circuit Court is entitled to compensation for signing validated municipal bonds under the provisions of Section 3300 and that he should be paid at the rate of twenty cents per hundred words or fraction thereof for each certificate signed.

If he is required to affix his seal, Section 3084 allows an additional charge for affixing seal but there is nothing in Section 3300 which requires the seal to be affixed as a part of the required certificate, although I am aware that such a requirement is usually insisted upon by the bond people.

The purpose of including a special fee for this in the new Clerk's Fee Bill was to reduce the amount of charge which was heretofore applicable.

I might also call your attention to the fact that in many cases the Clerk of the Circuit Court voluntarily agrees to accept a fee in an agreed amount for signing the bonds in the manner referred to in consideration of the fact that the certificate is usually already printed upon the bonds and all he has to do is to sign his name.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

TAXATION—ASSESSMENT OF IMPROVEMENTS DISCRETIONARY.

July 9, 1928.

Dear Sir:

Answering your letter of July 3, I beg to advise that the taxing laws of the State contemplate the actual value of the property as of January 1 shall be the basis of taxation. The courts have said that the primary end to be attained is equalization of taxes rather than the assessment of any particular figure of valuation. The matter of whether improvements on property which are not completed by January 1 could be included in the valuation on a pro rata basis is a matter which is exclusively for the tax assessor to determine as a question of fact. If the tax assessor feels that the property which is undergoing improvement attains no higher value by reason of the improvement until after the improvement is fully completed he could not put such improvement on as an increase in valuation. On the other hand, if in fact the beginning of an improvement on property makes an increase in the value thereof which increases progressively as the improvement goes along, such increase may be taken into consideration in making the valuation, even though the improvement be not completed on January 1. I might add that the universal practice of tax assessors, however, is not to assess the value of improvements until the improvements are completed.

Yours very truly,

FRED H. DAVIS, Attorney General.

DERELICT PROPERTY—DISPOSITION.

July 9, 1927.

Dear Sir:

I beg to acknowledge receipt of your letter of July 6th, making inquiry as to the method by which derelict or wrecked automobiles may be disposed of by your local authorities. In this connection, I wish to call your attention to Sections 3887 to 3892, inclusive, which lay down the manner derelict property may be disposed of. The procedure requires that the county judge shall issue an order to the sheriff to take charge of the wrecked derelict property and sell the same. One-half of the proceeds to go to the salvors or persons finding such goods, and the remainder, less the fees for the sale, must be paid over to the Commissioner of Agriculture to be by him paid into the State Treasury. In your case I would consider that your city is the salvor and would be entitled to one-half of the price received for such derelict goods, or automobiles as in this case, and that the balance less the fees incident to such sale would go to the Commissioner of Agriculture to be turned over to the State Treasurer.

It may be that you have some special provision in your city charter which would allow you to handle this matter by virtue of your authority to act as a city, and in such event it would not be necessary for you to pursue the general State law. As I have no means by which to acquaint myself with the provisions of your charter regarding matters of this kind, I am, therefore, unable to advise you as to the effect of such provisions should they exist. However, in the absence of such provisions in your charter, I think you would have to follow the State law referred to above, and if you do so I am sure the Comptroller will issue you a proper certificate to all cars sold under such proceedings.

Yours very truly,

FRED H. DAVIS, Attorney General.

PRISONERS—LAW PROVIDES SHERIFF'S FEE FOR FEEDING

September 18, 1928.

Dear Sir:

Answering your letter of September 12th, I beg to advise that there is nothing in the law which warrants a sheriff in charging more for feeding prisoners than the amounts fixed by law.

The mere fact that a prisoner has been convicted and sentenced does not change this rule, as I see the matter.

As to the question of furnishing wood and cooking utensils for the preparation of meals for prisoners, I beg to advise that this matter is left entirely up to the County Commissioners. Theoretically, the fees allowed the sheriff are supposed to cover these items, but it is the usual practice of all the counties throughout the State, with which I have had any contact, for the County Commissioners to furnish fuel and cooking utensils for use at the county jail, although there is no special law requiring them to do so.

The sheriff is not supposed to make a profit on the feeding of prisoners. The amounts allowed by law are to reimburse him for the expense of feeding prisoners and the amounts fixed by the law are just about twice the amount which the U. S. Government allows for the feeding of soldiers in the U. S. Army.

Trusting this answers your inquiry, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

NATIONAL BANKS—POWER TO TAX

September 18, 1928.

Dear Sir:

I think your question of September 8th will be answered by a reading of the case of Roberts, Tax Collector, vs. First National Bank of Pensacola, 115 So. 261, in which the question of the power to tax national banks is fully discussed.

It is due to this particular case that the banks are taking the position to which you refer.

I do not believe that a national bank can be made to pay an occupation tax unless the same is expressly permitted by the Federal statute. For Federal statute on the subject, see Section 5219, Revised Statutes, U. S.

Very truly yours,

FRED H. DAVIS, Attorney General.

PLATS—REVOCATION OF

September 18, 1928.

Dear Sir:

It is not within my province to pass upon the legality of particular cases based upon a special set of facts.

All I can say is that as a general proposition where a map or plat has been properly prepared and filed and accepted by the city, dedicating streets and avenues, the fee simple title under the present laws of this State to all streets and avenues shown on the plat passes to the city upon its acceptance of the plat.

This gives rise to three classes of rights:

1. The rights of the city to the streets;
2. The rights of property owners who buy lots with reference to the plat; and
3. Right of the dedicator who prepared and filed the plat.

If no lots have been sold in a platted subdivision it is probably legal for the dedicator to file a new plat which eliminates the streets and avenues and if such plat is properly approved by the City Council under such circumstances as to amount to a release of the title to the street, the former plat can be abrogated.

The mere filing of a plat without approval by the city cannot revoke a plat already filed.

The present law requires that before a plat can be approved and filed a survey corresponding to the plat be made and marked out upon the ground. This is supposed to eliminate any difference between width of streets shown on the plat and the width shown on the ground. Where there is a conflict between an actual survey and a plat, the actual survey controls.

Trusting this information will be of value to you, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

VETERANS, DISABLED—WHEN LICENSE TAXES NOT REQUIRED.

September 18, 1928.

Dear Sir:

Referring to your letter of the 10th inst., I beg to advise in my opinion Senate Bill No. 259 was intended to reach only that class of disabled war veterans who were dependent upon their own efforts for support and who desired to conduct some little personal business or occupation, for which a license tax is required and which the State thought they should be relieved of paying. I have previously so indicated in several opinions written on this subject.

I do not think that a veteran is entitled to have but one license nor do I think that the fact that he is a member of a partnership composed of several individuals entitles him to the exemption mentioned in the statute.

I have also indicated that I thought the license must be to cover a business which the veteran himself, personally, operates more or less entirely through his own efforts. I do not think that a veteran has a right to take out a license for a business and turn it over to someone else to run and give none of his time to it and still claim the exemption.

I realize that the law is a salutary one but at the same time is one

which is capable of great abuse and that the same is being abused by people who were never intended to be benefited by it.

I have run across alleged disabled Spanish American War Veterans who were much more qualified to do a day's manual labor than I am who claimed to be disabled to the extent that they were unable to perform manual labor and wanted a license under this law gratis.

The tax collector is the sole and exclusive judge as to whether or not a veteran is so disabled as to entitle such veteran to this exemption, and I would endeavor to administer the law—if I were a tax collector—in conjunction with the local American Legion authorities, who might designate some doctor in whom they had confidence to be examining physician and who would refuse to certify any veteran for a license who was really not *bona fide* disabled and unable to perform manual labor, as the statute prescribes.

In that class of cases where a bond is required for the faithful performance of a duty, such as the duty to properly operate a taxicab in a city without injury to the public, the requirement of bond is deemed a police regulation and Senate Bill 259 does not in anywise authorize the issuance of a license to anyone who does not give the required bond. In fact, all that Senate Bill No. 259 does do is to relieve a worthy disabled veteran from the payment of a fee, State, city or county, for the privilege of earning his own living mainly through his own efforts.

I enclose herewith copy of the latest letter I have prepared on this subject.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX EXEMPTIONS—WHEN WIDOWS AND DISABLED PERSONS WAIVE RIGHT OF.

October 2, 1928.

Dear Sir:

I acknowledge the receipt of letter of September 27th, addressed to me by Mr. J. D. Bryan, chief of collection bureau, in which he requests my opinion as to whether or not widows and disabled persons, who are entitled to tax exemptions, can claim a refund of the taxes paid after payment has been made, irrespective of any claim for exemption.

I will answer your request for my opinion with the understanding, of course, that this is a matter which is primarily within the province of your own city attorney and about which I would express no opinion except as a matter of information.

The constitutional provision allowing a \$500 exemption to widows and disabled persons is intended to operate for the benefit of such widows and disabled persons as make it appear to the duly constituted authorities that they are entitled to the exemption which they claim.

Claim for exemption should be made promptly and I am of the opinion, that a person who waits until after he has paid his taxes and who has paid in his taxes without claiming his constitutional exemption is deemed thereby to have waived his right to such exemption as to the taxes which he has paid and that there is neither a duty or power in the taxing authorities to refund such money.

I think, however, that a properly entitled widow or disabled person has a right to claim his exemption at any time up and until the time of actual

payment and that when the same is claimed and properly substantiated the tax collector should allow the exemption and take credit on his accounts for the amount of the allowance unless, of course, some other method is provided in your charter or city ordinance for making this claim.

Trusting this information will be of value to you, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

XIII.

UNOFFICIAL OPINIONS

The following are only a few of the opinions rendered by this office to various persons in this State which may be of interest to the public generally:

BANK STOCK ASSESSMENT—*IN RE* SUPREME COURT RULING

Dear Sir:

August 9, 1927.

I wish to acknowledge receipt of your letter of August 1st, with reference to the recent bank stock tax ruling of the Supreme Court. To summarize the matter briefly, the Supreme Court held that where it was made to appear that the tax assessor had assessed the capital stock of a national bank but had omitted to assess for taxation the capital stock of other corporations engaged in money lending in competition with banks and had failed to assess for taxation, mortgages, stocks, bonds, and other property similar to bank stock and which, under our laws, are equally liable for taxation as bank stock, that such conduct of the tax assessor constituted discrimination which would entitle the bank to go into a court of equity and obtain relief therefrom. The Court expressly held that bank stock, as all other species of property, is taxable and its ruling was predicated entirely upon the idea of discrimination. This is where I predicated my quoted statement upon to the effect that even State banks would be exempt under the recent ruling of the Supreme Court. That is to say, that if the Supreme Court sticks to its opinion that the tax assessor must assess all bonds, mortgages and monies in banks and other personal property in order to prevent discrimination against banks in assessing their capital stock and thereby collect a capital stock tax against banks, it means that either one of two things must happen; first, all banks must be exempted from taxation of their capital stock, or, second, tax assessors must be made to do their duty as laid down by the Supreme Court and put on the tax books all mortgages, bonds, monies in banks and capital stock of private corporations.

You can readily see that if the banks in this State generally insist upon raising this question of discrimination it is going to result in the placing of mortgages, stocks, bonds, bank deposits, etc., on the tax books, in order to make the bank stock liable for taxation and thereby, the banks are going to suffer more by forcing upon the tax books that class of property which has always been ignored than if they paid their taxes and said nothing about it, even though they are discriminated against.

I might conclude by saying that I am a director of a State bank myself, and so far as our bank is concerned, we have taken the view that it is better for us to pay the capital stock tax assessed against us than to realize upon the holdings of the Supreme Court to raise a question of discrimination and thereby bring increased taxes upon the whole community by forcing the tax assessor to place mortgages, notes, bonds and private corporation stock upon the tax books. The State and counties cannot afford to lose this revenue, and if they are compelled to elect in doing so and in placing more property in the tax books there is no doubt in my mind than that more property shall go on the tax books in order to collect from the banks what they have heretofore paid without protest.

My information is that Mr. Amos, Comptroller, is instructing all tax assessors to collect all bank taxes as heretofore in the absence of any litigation brought against them predicated upon the holding of the American National Bank case of Pensacola.

Trusting this answers your inquiry, I am,

Yours very truly,

FRED H. DAVIS, Attorney General.

JUSTICE OF THE PEACE—JURISDICTION.

November 17, 1927.

Dear Sir:

I beg to acknowledge the receipt of your letter of November 14th, asking my opinion in regard to certain matters therein stated.

Under the statutes there appears to be no doubt as to the power of a justice of the peace to issue warrants for, and bind over, persons to the proper court for prosecution on charges of violating the liquor laws.

Justices of the peace are constitutional committing magistrates and as such have power to issue warrants for offenders against all laws of the State, even though the Legislature has by statutory enactment deprived justices of the peace of their right to try offenders for violating the prohibition laws when sitting as trial courts.

In regard to the second paragraph of your letter, there seems to be no doubt that when a constable executes a lawful warrant for an offender against the laws of the State that he is entitled to his fees for executing such warrant, regardless of the outcome of the trial or hearing had therein. An opinion to this effect, I believe, was rendered by former Attorney General Thomas F. West and I fully concur with him in this respect, which is fully in conformity with the plain language of the law.

On the other hand, the statutes provide that where a committing magistrate issues a warrant and binds over a defendant against whom no information or indictment is found that such justice is not entitled to any fees for such services and the same section of the law recognizes the right of the officer serving process to have his fees paid him—Section 6174, Revised General Statutes.

You will understand that this opinion is merely given as a matter of information and is not in any sense any official opinion of this office, as we are not authorized to render such official opinions to private parties.

Very truly yours,

FRED H. DAVIS, Attorney General.

TAX CERTIFICATES—REDEMPTION.

February 4, 1928.

Dear Sir:

I have your letter of January 14th, inquiring whether or not any official opinions have been rendered by the Attorney General upon Chapter 7806, Acts of 1919, relating to the redemption of tax certificates held by the State of Florida.

Careful search of the archives of the office fails to reveal any opinion which touches upon the matter you inquire about in the second paragraph of your letter. I find, however, that the law has been construed by the Comp-

troller's office for some time and apparently its construction has been accepted as carrying out the meaning and intent of this statute.

The construction placed upon the statute by the Comptroller is that the statute was passed to promote the redemption of tax certificates held by the State. In order to encourage the redemption of such tax certificates the statute provides that where a tax certificate has been issued based upon a certain valuation and subsequent to the assessment upon which the tax certificate was based the value of the land is reduced, the person redeeming shall have the benefit of the last assessed valuation placed upon the land by the tax assessor so as to entitle him to redeem any outstanding tax certificates held by the State upon the basis of the last assessed valuation which appears.

For example, land may have been assessed at \$3,000 and tax certificate issued upon the land for the unpaid taxes for a particular year. The next year the tax assessor may have reduced the valuation of the same land to \$2,000. In such a case the \$3,000 tax certificate may be redeemed by the payment of taxes mentioned in the certificate figured on a \$2,000 valuation.

The law also intended to make a party redeeming from a State tax certificate take care of all current taxes as well as past due taxes and accordingly, if he redeems after April 1st of a particular year he must pay the taxes for that year based upon the valuation placed upon the year in question. Thus, parties redeeming tax certificates after April 1st, 1928, will be compelled to pay the 1928 taxes upon a valuation as fixed for the year 1928 by the tax assessor.

Trusting that this gives you the information that you requested, and with kind personal regards, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

POLL TAX—WHO EXEMPT

February 8, 1928.

Dear Sir:

In view of the approaching election in which I understand the Legion is participating to the extent that it is going to attempt to get all good citizens to register and vote without regard to parties or politics for which they might vote, I think it would be well to call one of the provisions of our election laws to the attention of all Legion Posts.

Section 215 of the Revised General Statutes of Florida, as amended by Section 1 of Chapter 8583, Acts of 1921, provides that no person shall be prevented from voting on account of not having paid poll tax for any year which shall not have been lawfully assessed against him or her by reason of his or her not having been of age or having been over 55 years of age, or who has lost a limb in battle or shall have become disabled in the United States Army or Navy service and who shall have procured and shall exhibit the certificate of the Supervisors of Registration to that effect.

The law also provides that where a person has been in the State less than one year previous to any general election he shall only be required to pay one year's poll tax if subject to poll taxes provided that he produces a poll tax receipt from the State from which he moved.

I am particularly anxious to call the attention of all Legion Posts to the provisions of the law which provides for exemptions from poll taxes for all

persons who have become disabled in the U. S. Army or Navy service. I think the language also includes within its purview service in the U. S. Marine Corps, although this service is not specifically named.

In order to obtain the exemption from payment of poll taxes above referred to all persons who have become disabled in the U. S. Army or Navy service should go to their registration officers and exhibit to such registration officer such evidence as they may have that they are disabled. The registration officer will then give them a certificate showing an exemption from poll taxes based on the ground of such disability. The disability may be proved by a certificate of disability issued under authority of any of the medical officers of the United States and it is not material how great or how small the disability may be. The important fact is that disability occurred during the service.

Nor is it material that the disability was incurred while the country was at war provided it was incurred during the service of the claimant in either the U. S. Army or Navy.

In addition to the foregoing it might be well to mention also that all officers and enlisted men of the Florida National Guard are exempt from the payment of poll taxes upon securing proper certificates from their commanding officers.

With kind personal regards, I am,

Fraternally yours,

FRED H. DAVIS, Attorney General.

COUNTY OFFICERS—COMPENSATION REPORTS

March 17, 1928.

Dear Sir:

I have your letter of March 15th, relative to my interpretation of Chapter 11954, Acts of 1927, Laws of Florida, relating to the compensation, reports, etc., of county officials.

I am of the opinion that the reports required to be made to the County Commissioners as provided by Section 3 of the Act must include every form of compensation received by the Clerk of the Circuit Court in his official capacity or by virtue of his office, which, of course, would include his salary as *ex officio* Clerk of the Board of County Commissioners and per diem for attendance on terms of court.

It seems to me that the Act should be construed in the light of the obvious outstanding purpose of the same which was to limit the compensation of county officials to the aggregate amounts specified in Section 1 of the Act, and this purpose would be largely defeated should the Act be so interpreted as to except from its terms compensation which the official receives by virtue of his office and which he could not receive except by reason of such office.

The purpose of Section 3 as understood in the Legislature and also as interpreted by the county officials which approved and sponsored this Act was to have the *report* made show the gross income received by the official *colore officii*.

In regard to the second proposition, which includes an interpretation of Section 1 of the Act, I think that the scale of compensation therein provided for is the aggregate amount which the official is entitled to receive from all sources of "income so collected by him." The latter phrase "income so col-

lected by him" is the language of the statute and undoubtedly embraces any compensation which may have been collected as per diems or for services rendered in an *ex officio* capacity as Clerk and Auditor of the Board of County Commissioners.

I might add that I think that the purpose of the statute is clear to insure the officer an income to the amount provided for in Section 1 of the Act and that no amount of fees accruing to the officer, which fees have not been collected by the officer, should be considered as included in the calculations nor be charged against the officer.

An opinion interpreting and construing the Act substantially as above stated was recently rendered by me to Hon. W. S. Murrow, assistant State Auditor, in the adjustment of the controversy between the County Commissioners and officials of one of the counties of this State.

Trusting this covers the matter about which you inquire, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

ADVERTISEMENTS, LEGAL.

March 24, 1928.

Dear Sir:

Answering your letter of March 19th, I beg to advise that there is no restriction on the right of a newspaper to be used as a medium for publishing legal advertisements by reason of the length of time it has been published except in the case of advertisements of tax sales.

Insofar as tax sales are concerned, the law contains the following provision in Section 756, Revised General Statutes of Florida:

* * * such list shall be published once each week for five consecutive weeks in some newspaper published in the county, if there be a newspaper, said newspaper to be selected by the Board of County Commissioners at their first regular meeting in February of each year, and the newspaper so selected shall have been continuously published in the county for a period of not less than one year prior to its selection * * *.

If a newspaper has been in existence and has been published in the county for a period of one year or more prior to its selection as a medium for the publication of the tax list of the county, whether such newspaper was under the same name or some other name to which it is successor, such newspaper can be lawfully designated as the medium through which the tax lists can be published under Section 756, Revised General Statutes of Florida.

As to other legal advertisements, the only requirement is that they be published in some newspaper of general circulation in the county, regardless of the age of the paper.

Cordially yours,

FRED H. DAVIS, Attorney General.

LAW—FISH AND GAME.

June 1, 1928.

Dear Sir:

Answering your letter of May 28th, I beg to advise that it seems to me that the question referred to by you is not so much an interpretation of the

repealing clause of the 1927 Act of the Legislature as it is of the right of the State Fresh Water Fish and Game Commissioner to determine the facts relative to the particular situation.

Undoubtedly, the new Fresh Water Fish and Game Act, being the last expression of the Legislature on the subject, cannot be interfered with by a law passed in 1915 and what I understand by the 1927 law is that it gives Mr. Royall the right to determine as a question of fact just where his jurisdiction ends and the jurisdiction of the salt water (Shell Fish Commission) commission begins.

Now, if Chapter 7082, Acts of 1915, covers fresh waters, it is undoubtedly repealed by the 1927 law.

The court will not take judicial notice of what are fresh and what are salt waters in cases where the facts are doubtful, as it would seem to me to be in the river you mentioned (Pithlachascootee River).

I believe, therefore, that the court would have to look to the fact that Mr. Royall has determined in the course of his administrative jurisdiction that the waters to which you refer are not salty but are fresh and that therefore the provisions of Chapter 7082, Acts of 1915, no longer apply. However, I do not think that the law means that Mr. Royall has unlimited and uncontrolled jurisdiction to arbitrarily declare that to be fresh water which is in fact salt water and that if there is any dispute about the correctness of Mr. Royall's determination as to where fresh water leaves off and salt water begins that the matter can be thrashed out in the courts in a proceeding challenging the correctness of Mr. Royall's conclusions as a conclusion of fact.

In cases where the evidence is in dispute I believe that a court will not upset Mr. Royall's decision by undertaking to weigh the evidence for and against his holding but if there is a total lack of evidence to support Mr. Royall's determination then I believe the courts can and will set aside his determination of fact and while that the law of 1915 is still in force by virtue of the fact that the waters you mentioned are salt waters and not fresh waters.

Trusting this answers your letter, and with kind personal regards, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

WAR VETERANS—TAX EXEMPTIONS

Dear Sir:

August 7, 1928.

Section 1, of Chapter 12110, Laws of Florida, Acts of 1927, provides that any person who served as an officer or enlisted man in the United States Army, Navy or Marine Corps during the World War between April 6th, 1917, and November 11th, 1918, or in the Spanish-American War, who was honorably discharged from the service of the United States, and who, *at the time of his application for license* shall be disabled to such an extent that he is unable to perform manual labor, shall be granted, upon sufficient identification and production of his certificate or other evidence showing an honorable discharge of the United States from the United States Army, Navy or Marine Corps during the World War between the dates aforesaid or the Spanish-American War, a license to engage in any business or occupation in the State of Florida without the payment of any license tax otherwise provided for by law.

By this Act it is made the duty of each and every tax collector, whether State, county or municipal, in this State, upon compliance with terms of the Act, to issue to any person who proves entitled thereto, without charge to such person, the license to engage in any business or occupation in which such person may wish to engage in this State.

It is required that the applicant must produce reasonable proof to the tax collector to establish the inability of the veteran to perform manual labor and the license, when issued, is required to be marked across the face thereof:

"WORLD WAR VETERAN'S LICENSE—NOT TRANSFERABLE"

or

"SPANISH-AMERICAN WAR VETERAN'S LICENSE—NOT TRANSFERABLE"

The license is required to be issued on the same forms as other licenses are issued but without charge, fee or other prerequisite of any kind and said license, when issued, expires at the same time and under the same conditions as other licenses expire.

The exemption contemplated is personal to the disabled veteran and the reasonable interpretation of the Act is that it only applies to those businesses or occupations which the veteran is able to personally engage in and to perform the duties of without material outside assistance; and cannot be construed to operate as an exemption from paying a license tax to conduct some large or extensive business.

Each county tax collector is the sole judge of whether or not a veteran is physically incapacitated to the extent that he is unable to perform manual labor within the meaning of the statute. Such tax collector may require whatever proof he deems proper to satisfy himself as to the disability or the extent of it, and proof of such disability must be confined to disability of the veteran at the time he applies for exemption regardless of what his condition was during the war.

It will be noted that the exemption is one from the payment of those occupational taxes which are provided for by the General License Law for revenue purposes, but the Act cannot be construed as an exemption from the payment of fees exacted by the State in the exercise of its police power, although it may to a certain extent be a revenue-producing measure.

Under the Act, therefore, the veteran is not exempt from the payment of such fees as registration fees under the Real Estate Broker's Law, inspection taxes under the Hotel Commission Law, registration fees for physicians and pharmacists, taxes upon motor vehicles or for dealing in gasoline; or any other tax except collected through the tax collectors.

The exemption provided for applies as well to taxes imposed by cities and towns as to those imposed by the State and county. While the exemption does not apply to taxes for the operation of motor vehicles, it will apply to a tax imposed upon the business of acting as a carrier for hire; that is to say, where a tax is imposed upon the occupation of the individual as distinguished from the fee charged for the operation of the vehicle.

Under the laws of this State, cities and towns are prohibited from charging a tax on an automobile itself but they may exact a tax against the individual for engaging in the occupation of a common carrier for hire and insofar as this occupation tax is concerned, the exemption is applicable.

Answering the other portion of your letter of the 4th inst., I beg to advise that Section 9 of Article IX of the Constitution of Florida allows an exemption from taxation of \$500

* * * to every person who has lost a limb or been disabled in war or by misfortune. * * *

The statutes of Florida do not undertake to define the amount of disability which must exist in order to entitle the person to the exemption authorized.

The question is, therefore, left to each tax assessor to determine for himself as a question of fact and I have suggested to the tax assessors of the various counties that inasmuch as the United States Government has prescribed the rule for determining disabilities of soldiers as a basis for claim upon Federal bounty that each tax assessor might adopt the same rule to be used by him in determining when disability exists.

In other words, where a claim of disability would be allowed by the United States Government as a claim against the government as a basis for Federal bounty or Federal benefit, such claim of disability should be likewise allowed as an exemption from taxation under this section of the Constitution.

In addition to the above exemptions, every head of a family residing in this State is entitled to an exemption of \$500 in taxation on all household goods and personal effects by virtue of an amendment to the Constitution adopted in 1924. However, this exemption is limited to household goods and personal effects and would not include an automobile or personal property of that character.

Trusting this answers your inquiry, I am,

Cordially yours,

FRED H. DAVIS, Attorney General.

MOTOR VEHICLES—CAPACITY.

September 24, 1928.

Dear Sir:

Replying to yours of the 20th inst., relative to the load capacity of motor vehicles upon the highways of the State outside the municipalities, I beg to advise that Chapter 10182, Acts of 1925, seems to be the latest statute on this subject.

That part of the chapter referred to, which amends Section 1011, Revised General Statutes, provides that no motor vehicle shall be operated on the public highways outside of any municipal corporation in this State carrying a load of more than sixteen thousand (16,000) pounds, including the weight of such motor vehicle.

The only exception to this provision appears to be the further provision that the State Road Department or County Commissioners of any county shall have the right to grant, in their discretion, permission to operate motor driven vehicles, trailers or semi-trailers on roads designated by them of the aggregate weight of truck and load not exceeding 16,000 pounds on each axle.

In my opinion, such permission can only be applied to trucks, trailers or semi-trailers. It is my further opinion that neither the Road Department nor County Commissioners have the right to prohibit the carrying of a load of less weight than that fixed by the statute.

Very truly yours,

H. E. CARTER, Assistant Attorney General.

SCHOOL BOARD—POWER TO BORROW MONEY.

October 11, 1928.

Dear Sir:

My attention is called to an editorial from your paper dated October 9, relative to an opinion given out from this office relative to the power of school boards to borrow money to pay up outstanding indebtedness. My opinion referred to, as quoted in the press, may not be quite clear, hence I write this letter in order that your impression in the matter may be made clearer.

On February 1, 1928, the Supreme Court of this State handed down an opinion in the case of Barrow vs. Moffett, reported in 116 So. page 71, wherein the Court held:

The constitution provides for raising of county school funds to be used "solely for the support and maintenance of public free schools" and contemplates the payment *when due* of the expenses for maintenance and support of such schools, and does not contemplate the issue of bonds to pay for past indebtedness.

In Leonard vs. Franklin, 84 Fla. 402, 93 So. 688, the Supreme Court held that long term interest bearing time warrants issued to be paid out of the general school tax levy in the county, were in effect bonds, and that they were invalid.

In Warren vs. Board Public Instruction, 86 Fla. 254, 97 So. 384, the Supreme Court held that where a statute authorized interest bearing warrants to raise money for *present and future* needs in the "maintenance and support of" free schools was legal, and in citing this case, the Supreme Court specifically pointed out that it was only sustained because it did not provide to issue such time warrants to pay outstanding indebtedness. See 116 So. text 71 and 72.

You will therefore see that the law is, not that the school board may not be authorized to borrow a portion of its annual budget for "present and future" needs of the schools as provided for by the general statutes, but that the school board cannot run into debt and then come in and issue time warrants to be paid out of say 1928 school revenue, to pay up a debt incurred in say 1927 or 1926. In other words, the Supreme Court has held that the School Boards must operate their schools on a "pay as you go" plan, and that even a special act of the Legislature which authorizes otherwise, is unconstitutional.

Trusting this sets the matter clear, I beg to remain,

Your obedient servant,

FRED H. DAVIS, Attorney General.

TAX EXEMPTIONS—WHO ENTITLED.

October 17, 1928.

Dear Madam:

Section 9 of Article IX of the Constitution of Florida reads as follows:

There shall be exempted from taxation property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a *bona fide* resident of the State and has lost a limb or been disabled in war or by misfortune.

A portion of Section 11 of Article IX of the Constitution reads as follows:

* * * There shall be exempt from taxation to the head of the family residing in this State household goods and personal effects to the value of five hundred dollars.

Under Section 9 of Article IX, widows who have a family dependent upon them for support are entitled to claim the exemption provided.

As a widow having a family dependent upon her for support would be the head of a family she would be entitled to a further exemption of \$500 on household goods and personal effects, if the family of which she is the head resides in this State.

The mere fact that a woman has been separated or divorced from her husband does not make her a widow within the meaning of the Constitution nor does the fact that she is a widow by itself entitle her to either of the exemptions referred to in the Constitution.

Under Section 11 of Article IX, the head of a family residing in this State, whether the head of the family is a man or woman, is entitled to claim the exemption on household goods or personal effects but household goods and personal effects will only include such goods as are usually kept in and used in the management of the household and an automobile or other vehicle is not embraced within this classification.

The exemption should be claimed by making affidavit asking for same and filing same with the tax assessor before the tax is assessed or if the tax has already been assessed by making the affidavit and proof before the tax collector *prior* to the payment of the tax.

The claim must be made each year and if not renewed each year may be disregarded by the taxing authorities.

The mere fact that a man or woman is disabled to the extent that he or she is incapable of performing manual labor or destitute does not entitle such person to claim any exemption under the law.

Under Section 9 of Article IX, persons who have lost a limb or been disabled in war or by misfortune are entitled to \$500 exemption on any taxable property owned by them, real or personal.

The phrase: "disabled in war or by misfortune" means so nearly totally disabled as to substantially impair the earning power of the claimant.

Trusting this answers your inquiry of the 14th inst., I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

LOCAL BILLS—ADVERTISEMENT

December 29, 1928.

Dear Sir:

I have your inquiry of December 22nd, in which you ask my opinion as to what should constitute the notice of intention to apply for the passage of a local bill under Section 21, Article III, Constitution of Florida, as amended at the General Election, 1928.

Section 16, Art. III, provides that each law enacted by the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title.

The Supreme Court in a number of cases has held that all that is required under this section is that the title of an Act must fairly give notice of

the subject of the Act so as to reasonably lead to an inquiry into the body of the bill and that the title need not be an index to the contents of the bill itself. *State vs. Bryan*, 39 So. 929.

It would appear to me that the same rule would apply to the notice required by Sec. 21, Art. III, as amended. This section provides that no local or special bill shall be passed unless notice of intention to apply therefor, i. e., for passage of the *bill*, shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law.

The question is then, what constitutes the "substitution" of the contemplated law as that is what is required to be published under the Constitution.

Insofar as this portion of the Constitution is concerned, the amendment makes no change in the provision as it existed prior to its adoption. The Legislature enacted Sections 94 and Section 95, Compiled Statutes, 1927, shortly after the Constitution of 1885 was adopted and in these sections provided that the notice should contain a short statement of the object desired to be accomplished by the passage of the special or local legislation in question.

This statute throws particular light upon what was intended by the constitutional language implied in the Constitution of 1885 because it was enacted at the last session of the Legislature which amended that Constitution.

It would appear, therefore, that it is a sufficient compliance with Sec. 21, Art. III of the Constitution, as amended, to have published the title of the proposed special or local bill, together with a short statement of the object desired by the passage of such special or local legislation.

In most cases the object desired by the special or local legislation will be practically what is stated in the title of the proposed bill but inasmuch as the statute says that the notice shall contain a short statement of the object desired by the special or local legislation, I would advise that in addition to the title there be some brief statement appended to it which would give further information as to the purpose of the proposed local law.

In this connection, you will observe that under the holding of the Supreme Court in the case of *Middleton vs. City of St. Augustine*, 42 Fla. 287, special or local legislation affecting cities and towns under Section 8, Article VIII, Constitution of 1885, is not controlled by the provisions of Sec. 21, Art. III, relating to publication of notice but same may be enacted at any session of the Legislature and *without* any notice being published as required by Sec. 21, Art. III, as it existed before the amendment or as it now exists.

Trusting this information will be of value to you and the other members of the bar, I am,

Very truly yours,

FRED H. DAVIS, Attorney General.

PICTURES—OBSCENE AND INDECENT, WHAT CONSTITUTE

December 22nd, 1928.

Dear Sir:

I regret that my continued absence from Tallahassee on important court engagements has prevented my giving you an earlier reply to your letter of the 12th inst., in which you request my opinion as to the legality of the display of a certain advertising poster upon which placard is depicted four chorus girls performing a high kicking dance, clad in meagre bodice and short

bloomers, midway of which is an attendant fringe of some fluffy silken material, probably intended to serve as a skirt but which signally fails of its purpose, thereby leaving exposed to public view the lower half of each female anatomy involved with the exception of that small portion thereof which is afforded virtually inadequate concealment by the daring brevity of the bloomers worn.

The statutes of Florida punish the public exhibition of any picture or thing containing any obscene figure or description manifestly tending to the corruption of the morals of youth under penalty of imprisonment in the State prison for five years, and the pictures themselves are subject to confiscation. (Secs. 7581-7582 Comp. Laws 1927, Anno. Secs. 5438-5439, R. G. S. 1920.)

Of essential importance to a decision of the question I am called upon to answer, is a determination of whether or not the picture complained of "manifestly tends to the corruption of the morals of youth." In deciding the matter it must be borne in mind that the "morals of youth" referred to in the statute are the prevailing standards of human conduct countenanced by contemporary society's approving opinion.

It is not so difficult to determine what conduct of present day youth is regarded by prevailing public opinion as being modernistically moral. The real difficulty lies in trying to ascertain just how shocked one's conduct must become in order for it to be regarded by authoritative opinion as being contrary to good morals as currently understood.

A casual view of the passers-by on our streets, of the pictures on our best magazine covers, of the sight of actresses and actors on the stage and in the movies, and of even our church and social leaders among women, will unquestionably impress one that this is the day of excessively abbreviated skirts, affording what may be regarded by some as being a too generous and unobstructed view of the major portion of the lower anatomy of the twentieth century female. Few of the masculine sex are now so inexperienced or unsophisticated as to be admittedly perturbed by the panorama of varying styles in feminine wearing apparel (or lack of it) which would have undoubtedly furnished a rude spiritual jolt to the perspection of our forefathers.

Whatever has been the change in the habits and customs of our good sisters of the opposite sex, they have not been brought about without violent protest from venerable and conscientious members of the male gender, who have viewed these innovations with trepidation and misgivings.

Thus as far back as the days of the Prophet Isaiah we find in the Holy Bible a bitter denunciation of the conduct and dress of the progressive female of that day who evidently insisted, as woman does now, on designing and wearing attire not approved by the elderly prophet. "Jerusalem is ruined and Judah is fallen. * * * The daughters of Zion are haughty and walk with stretched-forth necks and wanton eyes, walking and mincing as they go, and making a tinkling with their feet." (Isaiah, Chapter II, verses 8 and 16.)

However, notwithstanding the dire lamentations of the ancient Isaiah, the female sex has during the succeeding years continued to do as it pleased in the manner of dress and action, and mere man has found himself helpless to restrain the same by threat, cajolery or condemnation, so long as there were others of the male sex to approve and admire that which their brothers have so heartily condemned.

As I have pointed out, it is difficult to decide under present-day standards

what is immoral; therefore it is not an easy task to determine where runs the line of demarcation between that which is legitimate and proper and that which is vulgar and immoral, as the latter term is now understood.

Years ago there was a like difficulty of determining where ran the line of separation between beverages which are intoxicating and therefore immoral and those which were not intoxicating and therefore licit. To settle this vexed question the leaders of the prohibition movement were forced to adopt an arbitrary standard by which they fixed one-half of one per cent of alcohol as being the immovable boundary between that which was approved as lawful and that which was condemned as outlawed.

Judging by the modern trend of female dress on the stage and in the movies, it would appear that the ladies of the theatrical profession have adopted the same percentage for their dress as they are forced to observe for their beverages, and that under this modern percentage rule so adopted, and which is generally approved by the press and public, it must now be held that so long as the modern-day chorus girl has one-half of one percent of the lower half of her anatomy duly covered with clothing of some denomination, that she is to be regarded as being sufficiently well and properly dressed to escape the denunciation of our laws directed at such a state of undress as would tend to corrupt the morals of youth.

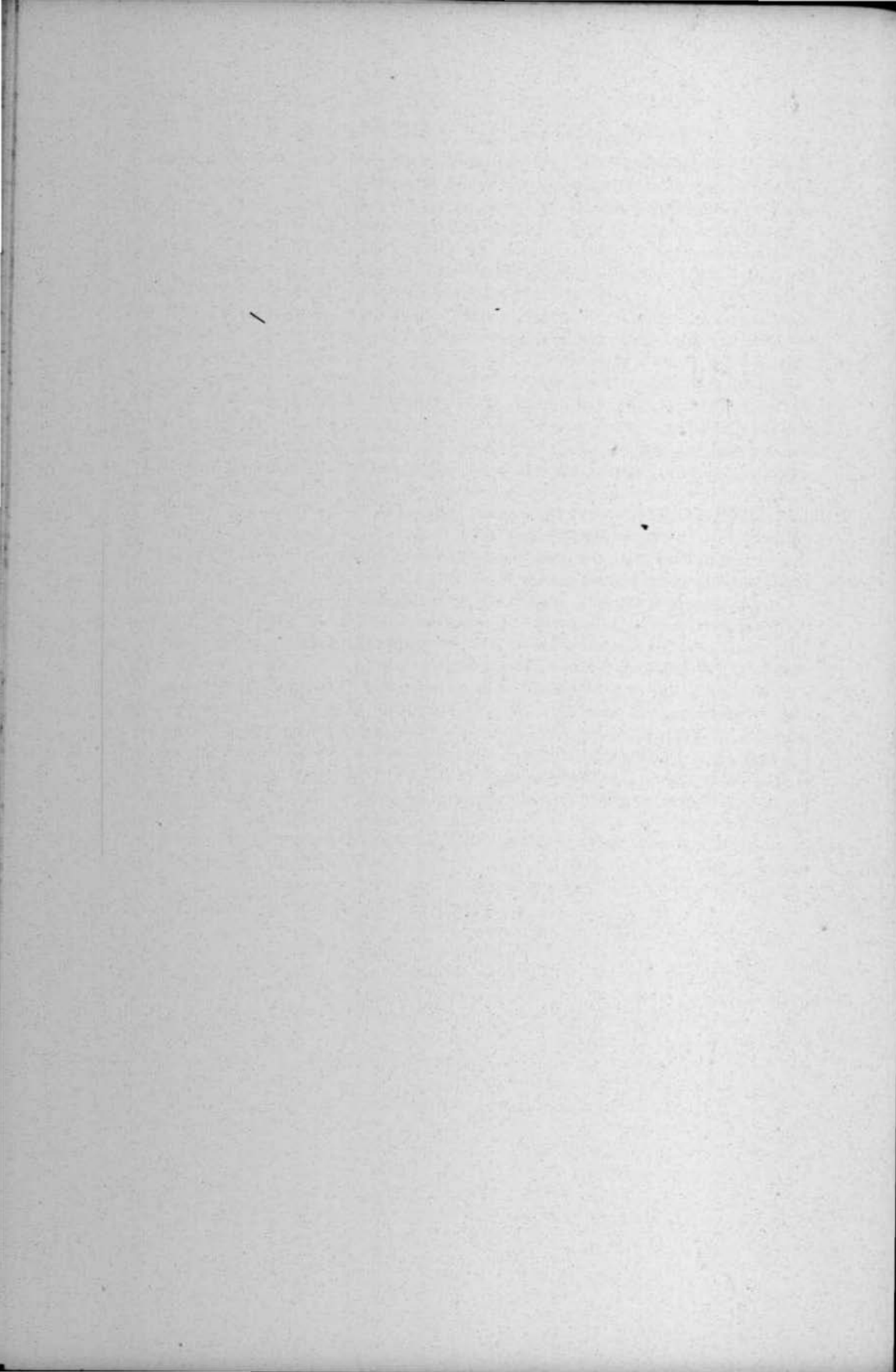
I am therefore forced to give it as my opinion in response to your request therefor, that I do not believe that a prosecution for display of the chorus girl poster you have submitted to me for inspection could be successfully maintained under our statute above referred to.

No doubt, like the Prophet Isaiah of old, we of the masculine sex who are old-fashioned in our views, will feel as did Isaiah, that "Jerusalem is ruined and Judah is fallen," because of the present fashion in vogue for wearing apparel of women, but it appears that we are in the minority in our views on the subject and therefore, as good Democrats, we should gracefully, and perhaps cheerfully, submit to the prevailing ideas of the modernistic majority on this subject.

Wishing you a Merry Christmas and a Happy New Year, I have the honor to be

Yours very truly,

FRED H. DAVIS, Attorney General.



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